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Bill 108

An Act to amend the Insurance Act

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations



1st Reading April 22nd, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

SECTION 1. The new definitions are complementary to amendments set out in sections 3, 5, 7 and 8 of the Bill.

SECTION 2. The amendment is complementary to new regulation making powers related to reinsurance set out in section 8 of the Bill.

SECTION 3. The proposed section 24a requires property and casualty insurers in Ontario to be members of a compensation association which will be established by the insurance industry to provide compensation to policy holders of insurers licensed in Ontario that have become insolvent.

SECTION 4. The proposed amendments to section 28 increase the paid up capital and surplus of property and casualty insurers from \$1,000,000 to \$3,000,000. Existing companies will have five years to meet the new requirements.

SECTIONS 5 and 6. The proposed section 39a imposes additional requirements on licensed insurers (other than those referred to in subsection 39a (2)). These requirements may be enforced under section 38 of the Act through suspension or cancellation of the licence of the insurer or, in the case of an Ontario company, through the remedial powers of the Minister set out in section 40 of the Act, as amended by section 6 of the Bill. Section 6 will also extend the Minister's remedial powers to include situations where the paid up capital and surplus requirements of section 28 are not being maintained.

SECTION 7. The proposed section 97a authorizes the Minister to enter into agreements with a compensation association related to a compensation plan for policyholders of insolvent insurers.

SECTION 8. Section 98 of the Act sets out several regulation making powers. The proposed clause (aa) will enable the Lieutenant Governor in Council to prescribe forms and provide for their use. The proposed clause (af) will enable the Lieutenant Governor in Council to restrict the amount of business that may be reinsured through insurers that are not licensed in Ontario. The other proposed clauses are complementary to the amendments to the Act set out in sections 3 and 5 of the Bill.

Bill 108

1986

An Act to amend the Insurance Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, as amended by section 398 of the said chapter 218, is further amended by adding thereto the following paragraph:

13a. "compensation association" means a body corporate or unincorporated association the purpose of which is to provide compensation to claimants and policyholders of insolvent insurers and that has been designated under the regulations as a compensation association.

2. Section 22 of the said Act is amended by adding at the commencement thereof "Subject to the regulations".

3. The said Act is amended by adding thereto the following section:

24a.—(1) Where a compensation association has been designated by the regulations as a compensation association for any of the following classes of insurance,

Membership
in compen-
sation
association

- (a) automobile insurance;
- (b) boiler and machinery insurance;
- (c) fire insurance;
- (d) inland transportation insurance;
- (e) live stock insurance;
- (f) public liability insurance;
- (g) plate glass insurance;

- (h) property damage insurance;
- (i) sprinkler leakage insurance;
- (j) theft insurance;
- (k) weather insurance; or
- (l) any such class or classes of insurance as may be designated in the regulations,

every insurer while licensed to carry on that class of insurance and for 183 days after ceasing to be so licensed shall be deemed to be a member of the compensation association and shall be bound by the by-laws and memorandum of operation of the compensation association.

Assessments
and levies

(2) A member of a compensation association shall pay to the compensation association all assessments and levies made against the member by the compensation association, and, where the member fails to pay the assessment or levy within thirty days of the day the notice of the assessment or levy is mailed to the member,

- (a) the compensation association may claim the amount of the assessment or levy, with interest, as a debt due from the member or if the insurer has ceased to be a member, from the former member; and
- (b) the licence of the member to carry on insurance may be cancelled.

Non-
application

(3) Subsections (1) and (2) do not apply to,

- (a) a mutual insurance corporation that is a member of the Fire Mutuals Guarantee Fund or such other insurers designated under the regulations as being adequately covered by some other plan of compensation; or
- (b) an insurer whose business is limited to that of re-insurance.

4. Subsection 28 (1) of the said Act is repealed and the following substituted therefor:

Capital
requirements
for licence

(1) A licence shall not be granted to a joint stock insurance company not licensed before the 1st day of January, 1971 unless the company furnishes to the Superintendent satisfactory evidence that if the company is applying for a licence to

transact the business of life insurance, the company has paid up capital and surplus of not less than \$2,000,000, or such greater amount as the Minister in the circumstances may require, of which at least \$1,000,000 is paid up capital and at least \$500,000 is unimpaired surplus.

(1a) A licence shall not be granted to a joint stock insurance company unless the company furnishes to the Superintendent satisfactory evidence that if the company is applying for a licence to transact any insurance other than life insurance, the company has, in aggregate, a paid up capital and unimpaired surplus of not less than \$3,000,000 or such greater amount as the Minister in the circumstances may require. Idem

(1b) Subsection (1a) does not apply until the 1st day of January, 1991 to a joint stock insurance company that immediately before the coming into force of that subsection was licensed under this Act, but the company shall furnish to the Superintendent satisfactory evidence when applying for a licence to transact any insurance, other than life insurance, that the company has, in aggregate, a paid up capital and unimpaired surplus of not less than \$1,000,000 or such greater amount as the Minister in the circumstances may require. Idem

(1c) A licence shall not be granted to a mutual insurance corporation, a cash-mutual insurance corporation, an insurance company mentioned in paragraph 6 of subsection 23 (1), or to an underwriter or syndicate of underwriters operating on the plan known as Lloyds, except upon proof that the net surplus of assets over all liabilities exceeds the amount fixed by subsection (1a) or (1b), as the case may be, for the paid in capital stock of joint stock insurance companies, and that such net surplus of assets over all liabilities together with the contingent liability of members, if any, exceeds the amount fixed by subsection (1a) or (1b), as the case may be, for the paid up capital and surplus of joint stock insurance companies for the respective classes of insurance mentioned therein. Idem

(1d) On the report of the Superintendent, the Lieutenant Governor in Council may by order exempt an insurer from the minimum capital requirements set out in subsection (1a), (1b) or (1c), as the case may be, if the insurer is offering its services only within Ontario or if the insurer is offering a specialized or limited service that in the opinion of the Lieutenant Governor in Council does not require the support of higher capital requirements. Idem

(1e) An exemption under subsection (1d) may be made subject to such conditions as the Lieutenant Governor in Council may impose. Idem

5. The said Act is further amended by adding thereto the following section:

Additional
requirements

39a.—(1) Subject to subsection (2), every insurer licensed under this Act,

- (a) shall maintain such ratio of gross written premiums to paid up capital and surplus and of net written premiums to paid up capital and surplus as may be prescribed by the regulations;
- (b) shall submit with the annual statement required by subsection 81 (1) an opinion by an actuary as to the adequacy of provisions made for unearned premiums, unpaid claims and claims adjustment expenses as of the end of the year covered by the annual statement;
- (c) shall not permit the amounts due,
 - (i) from its agents to exceed such percentage of its paid up capital and surplus as may be prescribed by the regulations, and
 - (ii) from its subsidiaries and affiliates, other than those that are insurers, to exceed such amount as may be prescribed by the regulations;
- (d) shall maintain assets, exclusive of any investments of the insurer that are not authorized by this Act or that were not authorized by law at the time of acquisition in an amount that bears not less than a reasonable relationship to the outstanding liabilities of the insurer, all in accordance with such calculation as may be prescribed by the regulations.

Exceptions

(2) This section does not apply to a mutual insurance corporation that is a member of the Fire Mutuals Guarantee Fund or to a life insurance company.

Determina-
tion
of
percentages

(3) In lieu of prescribing a percentage or an amount for the purposes of clause (1) (c), the regulations may provide for methods of determining the percentage or amount, or both, and where such a method is prescribed, the percentage or amount, or both, as the case may be, shall be determined in accordance with the appropriate method.

Transition

(4) Until the day five years after the day this section comes into force, the Superintendent,

- (a) may accept an opinion under clause (1) (b) from a person other than an actuary, if the person has comparable experience and training and is approved by the Superintendent; and
- (b) may exempt any insurer from any requirement or requirements of subsection (1) or the regulations passed in relation thereto for a period not exceeding one year and such an exemption,
 - (i) may be subject to such conditions as the Superintendent may impose, and
 - (ii) may be made retroactive to such date as the Superintendent may specify.

6.—(1) Subsection 40 (1) of the said Act is repealed and the following substituted therefor:

(1) With respect to an insurer incorporated or organized under the laws of Ontario, where the Superintendent is of the opinion that, Report to Minister

- (a) the assets of the insurer are not sufficient to justify its continuance in business or to provide for its obligations;
- (b) the insurer is persistently failing to comply with section 39a; or
- (c) the insurer is failing to comply with section 28,

the Superintendent shall so report to the Minister.

(2) Clause 40 (2) (b) of the said Act is repealed and the following substituted therefor:

- (b) prescribe a time within which the insurer shall correct any failure or deficiency set out in the report of the Superintendent under subsection (1).

(3) Subsection 40 (3) of the said Act is amended by striking out “fails to make good any deficiency of assets” in the first and second lines and inserting in lieu thereof “does not correct any failure or deficiency”.

(4) Subsection 40 (4) of the said Act is repealed and the following substituted therefor:

Appointment
of
appraisers,
etc.

(4) For the purpose of this section, the Minister may appoint such persons as the Minister considers necessary to appraise the assets and liabilities of the insurer and to determine the adequacy of its reserves and to report upon its condition.

7. The said Act is further amended by adding thereto the following section:

Authority of
Minister

97a. The Minister, with the approval of the Lieutenant Governor in Council, may enter into agreements with a compensation association related to the conduct of a plan to compensate policyholders of insolvent insurers.

8.—(1) Section 98 of the said Act is amended by adding thereto the following clauses:

- (aa) prescribing forms and providing for their use;
- (ab) designating one or more bodies corporate or associations as compensation associations and designating any such body corporate or association as a compensation association for one or more classes of insurance;
- (ac) designating classes of insurance for the purposes of clause 24a (1) (l);
- (ad) designating insurers for the purposes of subsection 24a (3);
- (ae) prescribing ratios, percentages, amounts and calculations for the purposes of subsection 39a (1) and any such regulation may prescribe different ratios, percentages, amounts and calculations for one or more classes of insurance and for insurers whose business is limited to that of reinsurance;
- (af) prescribing a maximum proportion of risks that may be reinsured with insurers that are not licensed under this Act and such proportion may vary for different classes of insurance.

(2) The said section 98 is further amended by adding thereto the following subsection:

Effective
date of
regulations

(2) A regulation made under clause (ae) does not come into force until the day thirty days after it is filed with the Registrar of Regulations or such later day as may be set out in the regulation.

9. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

10. The short title of this Act is the *Insurance Amendment Act, 1986*. Short title

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Public

Bill 108

Government Bill

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 108

An Act to amend the Insurance Act

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations



<i>1st Reading</i>	April 22nd, 1986
<i>2nd Reading</i>	December 17th, 1986
<i>3rd Reading</i>	
<i>Royal Assent</i>	

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

SECTION 1. The new definitions are complementary to amendments set out in sections 3, 5, 7 and 8 of the Bill.

SECTION 2. The amendment is complementary to new regulation making powers related to reinsurance set out in section 8 of the Bill.

SECTION 3. The proposed section 24a requires property and casualty insurers in Ontario to be members of a compensation association which will be established by the insurance industry to provide compensation to policy holders of insurers licensed in Ontario that have become insolvent.

SECTION 4. The proposed amendments to section 28 increase the paid up capital and surplus of property and casualty insurers from \$1,000,000 to \$3,000,000. Existing companies will have five years to meet the new requirements.

SECTIONS 5 and 6. The proposed section 39a imposes additional requirements on licensed insurers (other than those referred to in subsection 39a (2)). These requirements may be enforced under section 38 of the Act through suspension or cancellation of the licence of the insurer or, in the case of an Ontario company, through the remedial powers of the Minister set out in section 40 of the Act, as amended by section 6 of the Bill. Section 6 will also extend the Minister's remedial powers to include situations where the paid up capital and surplus requirements of section 28 are not being maintained.

SECTION 7. The proposed section 97a authorizes the Minister to enter into agreements with a compensation association related to a compensation plan for policyholders and eligible claimants of insolvent insurers.

SECTION 8. Section 98 of the Act sets out several regulation making powers. The proposed clause (aa) will enable the Lieutenant Governor in Council to prescribe forms and provide for their use. The proposed clause (ag) will enable the Lieutenant Governor in Council to restrict the amount of business that may be reinsured through insurers that are not licensed in Ontario. The other proposed clauses are complementary to the amendments to the Act set out in sections 3 and 5 of the Bill.

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1986

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1. Section 1 of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, as amended by section 398 of the said chapter 218, is further amended by adding thereto the following paragraph:

13a. "compensation association" means a body corporate or unincorporated association the purpose of which is to provide compensation to claimants and policyholders of insolvent insurers and that has been designated under the regulations as a compensation association.

2. Section 22 of the said Act is amended by adding at the commencement thereof "Subject to the regulations".

3. The said Act is amended by adding thereto the following section:

24a.—(1) Where a compensation association has been designated by the regulations as a compensation association for any of the following classes of insurance, Membership in compensation association

- (a) automobile insurance;
- (b) boiler and machinery insurance;
- (c) fire insurance;
- (d) inland transportation insurance;
- (e) live stock insurance;
- (f) public liability insurance;
- (g) plate glass insurance;

- (h) property damage insurance;
- (i) sprinkler leakage insurance;
- (j) theft insurance;
- (k) weather insurance; or
- (l) any such class or classes of insurance as may be designated in the regulations,

every insurer while licensed to carry on that class of insurance and for 183 days after ceasing to be so licensed shall be deemed to be a member of the compensation association and shall be bound by the by-laws and memorandum of operation of the compensation association.

Assessments
and levies

(2) A member of a compensation association shall pay to the compensation association all assessments and levies made against the member by the compensation association, and, where the member fails to pay the assessment or levy within thirty days of the day the notice of the assessment or levy is mailed to the member,

- (a) the compensation association may claim the amount of the assessment or levy, with interest, as a debt due from the member or if the insurer has ceased to be a member, from the former member; and
- (b) the licence of the member to carry on insurance may be cancelled.

Non-
application

(3) Subsections (1) and (2) do not apply to,

- (a) a mutual insurance corporation that is a member of the Fire Mutuals Guarantee Fund or such other insurers designated under the regulations as being adequately covered by some other plan of compensation;
- (b) an insurer whose business is limited to that of re-insurance;
- (c) an insurer named in an agreement entered into under section 97a as an insurer to whom subsections (1) and (2) do not apply; or
- (d) a reciprocal or inter-insurance exchange.

4. Subsection 28 (1) of the said Act is repealed and the following substituted therefor:

(1) A licence shall not be granted to a joint stock insurance company not licensed before the 1st day of January, 1971 unless the company furnishes to the Superintendent satisfactory evidence that if the company is applying for a licence to transact the business of life insurance, the company has paid up capital and surplus of not less than \$2,000,000, or such greater amount as the Minister in the circumstances may require, of which at least \$1,000,000 is paid up capital and at least \$500,000 is unimpaired surplus.

Capital
requirements
for licence

(1a) A licence shall not be granted to a joint stock insurance company unless the company furnishes to the Superintendent satisfactory evidence that if the company is applying for a licence to transact any insurance other than life insurance, the company has, in aggregate, a paid up capital and unimpaired surplus of not less than \$3,000,000 or such greater amount as the Minister in the circumstances may require.

Idem

(1b) Subsection (1a) does not apply until the 1st day of January, 1991 to a joint stock insurance company that immediately before the coming into force of that subsection was licensed under this Act, but the company shall furnish to the Superintendent satisfactory evidence when applying for a licence to transact any insurance, other than life insurance, that the company has, in aggregate, a paid up capital and unimpaired surplus of not less than \$1,000,000 or such greater amount as the Minister in the circumstances may require.

Idem

(1c) A licence shall not be granted to a mutual insurance corporation, a cash-mutual insurance corporation, an insurance company mentioned in paragraph 6 of subsection 23 (1), or to an underwriter or syndicate of underwriters operating on the plan known as Lloyds, except upon proof that the net surplus of assets over all liabilities exceeds the amount fixed by subsection (1a) or (1b), as the case may be, for the paid up capital stock of joint stock insurance companies, and that such net surplus of assets over all liabilities together with the contingent liability of members, if any, exceeds the amount fixed by subsection (1a) or (1b), as the case may be, for the paid up capital and surplus of joint stock insurance companies for the respective classes of insurance mentioned therein.

Idem

(1d) On the report of the Superintendent, the Lieutenant Governor in Council may by order exempt an insurer from the minimum capital requirements set out in subsection (1a), (1b) or (1c), as the case may be, if the insurer is offering its services only within Ontario or if the insurer is offering a spe-

Idem

cialized or limited service that in the opinion of the Lieutenant Governor in Council does not require the support of higher capital requirements.

Idem

(1e) An exemption under subsection (1d) may be made subject to such conditions as the Lieutenant Governor in Council may impose.

5. The said Act is further amended by adding thereto the following section:



Additional
requirements

39a.—(1) Subject to subsection (2), every insurer licensed under this Act,

- (a) shall submit with the annual statement required by subsection 81 (1) an opinion by an actuary as to the adequacy of provisions made for unearned premiums, unpaid claims and claims adjustment expenses as of the end of the year covered by the annual statement; and
- (b) shall maintain assets, exclusive of any investments of the insurer that are not authorized by this Act or that were not authorized by law at the time of acquisition in an amount that bears not less than a reasonable relationship to the outstanding liabilities, premiums and loss experience of the insurer, all in accordance with such calculation as may be prescribed by the regulations.

Exceptions


(2) This section does not apply to a mutual insurance corporation that is a member of the Fire Mutuals Guarantee Fund or to an insurer licensed to transact only,

- (a) the business of life insurance;
- (b) the business of accident and sickness insurance; or
- (c) the business of life insurance and the business of accident and sickness insurance.

Transition

(3) Until the day five years after the day this section comes into force, the Superintendent,

- (a) may accept an opinion under clause (1) (a) from a person other than an actuary, if the person has comparable experience and training and is approved by the Superintendent; and

- (b) may exempt any insurer from any requirement or requirements of subsection (1) or the regulations passed in relation thereto for a period not exceeding one year and such an exemption,
 - (i) may be subject to such conditions as the Superintendent may impose, and
 - (ii) may be made retroactive to such date as the Superintendent may specify. 

6.—(1) Subsection 40 (1) of the said Act is repealed and the following substituted therefor:

(1) With respect to an insurer incorporated or organized under the laws of Ontario, where the Superintendent is of the opinion that, Report to Minister

- (a) the assets of the insurer are not sufficient to justify its continuance in business or to provide for its obligations;
- (b) the insurer is persistently failing to comply with section 39a; or
- (c) the insurer is failing to comply with section 28,

the Superintendent shall so report to the Minister.

(2) Clause 40 (2) (b) of the said Act is repealed and the following substituted therefor:

- (b) prescribe a time within which the insurer shall correct any failure or deficiency set out in the report of the Superintendent under subsection (1).

(3) Subsection 40 (3) of the said Act is amended by striking out “fails to make good any deficiency of assets” in the first and second lines and inserting in lieu thereof “does not correct any failure or deficiency”.

(4) Subsection 40 (4) of the said Act is repealed and the following substituted therefor:

(4) For the purpose of this section, the Minister may appoint such persons as the Minister considers necessary to appraise the assets and liabilities of the insurer and to determine the adequacy of its reserves and to report upon its condition. Appointment of appraisers, etc.

7. The said Act is further amended by adding thereto the following section:

Authority of
Minister

97a. The Minister, with the approval of the Lieutenant Governor in Council, may enter into agreements with a compensation association related to the conduct of a plan to compensate policyholders and eligible claimants of insolvent insurers.

8.—(1) Section 98 of the said Act is amended by adding thereto the following clauses:

- (aa) prescribing forms and providing for their use;
- (ab) designating one or more bodies corporate or associations as compensation associations and designating any such body corporate or association as a compensation association for one or more classes of insurance;
- (ac) designating classes of insurance for the purposes of clause 24a (1) (l);
- (ad) designating insurers for the purposes of subsection 24a (3);
- (ae) prescribing ratios, percentages, amounts and calculations for the purposes of subsection 39a (1) and any such regulation may prescribe different ratios, percentages, amounts and calculations for one or more classes of insurance and for insurers whose business is limited to that of reinsurance;
- ➡ (af) exempting any insurer or class of insurers from any regulation made under clause (ae) subject to such terms and conditions as may be set out in the regulations; ⬆
- (ag) prescribing a maximum proportion of risks that may be reinsured with insurers that are not licensed under this Act and such proportion may vary for different classes of insurance.

(2) The said section 98 is further amended by adding thereto the following subsection:

Effective
date of
regulations

(2) A regulation made under clause (ae) does not come into force until the day thirty days after it is filed with the Registrar of Regulations or such later day as may be set out in the regulation.

9. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

10. The short title of this Act is the *Insurance Amendment Act, 1986*. Short title

Bill 108

(Chapter 67
Statutes of Ontario, 1986)

An Act to amend the Insurance Act

The Hon. M. Kwinter
Minister of Consumer and Commercial Relations

<i>1st Reading</i>	April 22nd, 1986
<i>2nd Reading</i>	December 17th, 1986
<i>3rd Reading</i>	December 18th, 1986
<i>Royal Assent</i>	December 18th, 1986



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- (e) live stock insurance;
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- (k) weather insurance; or
- (l) any such class or classes of insurance as may be designated in the regulations,

every insurer while licensed to carry on that class of insurance and for 183 days after ceasing to be so licensed shall be deemed to be a member of the compensation association and shall be bound by the by-laws and memorandum of operation of the compensation association.

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and levies

(2) A member of a compensation association shall pay to the compensation association all assessments and levies made against the member by the compensation association, and, where the member fails to pay the assessment or levy within thirty days of the day the notice of the assessment or levy is mailed to the member,

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(3) Subsections (1) and (2) do not apply to,

- (a) a mutual insurance corporation that is a member of the Fire Mutuals Guarantee Fund or such other insurers designated under the regulations as being adequately covered by some other plan of compensation;
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- (c) an insurer named in an agreement entered into under section 97a as an insurer to whom subsections (1) and (2) do not apply; or
- (d) a reciprocal or inter-insurance exchange.

4. Subsection 28 (1) of the said Act is repealed and the following substituted therefor:

(1) A licence shall not be granted to a joint stock insurance company not licensed before the 1st day of January, 1971 unless the company furnishes to the Superintendent satisfactory evidence that if the company is applying for a licence to transact the business of life insurance, the company has paid up capital and surplus of not less than \$2,000,000, or such greater amount as the Minister in the circumstances may require, of which at least \$1,000,000 is paid up capital and at least \$500,000 is unimpaired surplus.

Capital
requirements
for licence

(1a) A licence shall not be granted to a joint stock insurance company unless the company furnishes to the Superintendent satisfactory evidence that if the company is applying for a licence to transact any insurance other than life insurance, the company has, in aggregate, a paid up capital and unimpaired surplus of not less than \$3,000,000 or such greater amount as the Minister in the circumstances may require.

Idem

(1b) Subsection (1a) does not apply until the 1st day of January, 1991 to a joint stock insurance company that immediately before the coming into force of that subsection was licensed under this Act, but the company shall furnish to the Superintendent satisfactory evidence when applying for a licence to transact any insurance, other than life insurance, that the company has, in aggregate, a paid up capital and unimpaired surplus of not less than \$1,000,000 or such greater amount as the Minister in the circumstances may require.

Idem

(1c) A licence shall not be granted to a mutual insurance corporation, a cash-mutual insurance corporation, an insurance company mentioned in paragraph 6 of subsection 23 (1), or to an underwriter or syndicate of underwriters operating on the plan known as Lloyds, except upon proof that the net surplus of assets over all liabilities exceeds the amount fixed by subsection (1a) or (1b), as the case may be, for the paid in capital stock of joint stock insurance companies, and that such net surplus of assets over all liabilities together with the contingent liability of members, if any, exceeds the amount fixed by subsection (1a) or (1b), as the case may be, for the paid up capital and surplus of joint stock insurance companies for the respective classes of insurance mentioned therein.

Idem

(1d) On the report of the Superintendent, the Lieutenant Governor in Council may by order exempt an insurer from the minimum capital requirements set out in subsection (1a), (1b) or (1c), as the case may be, if the insurer is offering its services only within Ontario or if the insurer is offering a spe-

Idem

cialized or limited service that in the opinion of the Lieutenant Governor in Council does not require the support of higher capital requirements.

Idem

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- (a) shall submit with the annual statement required by subsection 81 (1) an opinion by an actuary as to the adequacy of provisions made for unearned premiums, unpaid claims and claims adjustment expenses as of the end of the year covered by the annual statement; and
- (b) shall maintain assets, exclusive of any investments of the insurer that are not authorized by this Act or that were not authorized by law at the time of acquisition in an amount that bears not less than a reasonable relationship to the outstanding liabilities, premiums and loss experience of the insurer, all in accordance with such calculation as may be prescribed by the regulations.

Exceptions

(2) This section does not apply to a mutual insurance corporation that is a member of the Fire Mutuals Guarantee Fund or to an insurer licensed to transact only,

- (a) the business of life insurance;
- (b) the business of accident and sickness insurance; or
- (c) the business of life insurance and the business of accident and sickness insurance.

Transition

(3) Until the day five years after the day this section comes into force, the Superintendent,

- (a) may accept an opinion under clause (1) (a) from a person other than an actuary, if the person has comparable experience and training and is approved by the Superintendent; and

- (b) may exempt any insurer from any requirement or requirements of subsection (1) or the regulations passed in relation thereto for a period not exceeding one year and such an exemption,
 - (i) may be subject to such conditions as the Superintendent may impose, and
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6.—(1) Subsection 40 (1) of the said Act is repealed and the following substituted therefor:

(1) With respect to an insurer incorporated or organized under the laws of Ontario, where the Superintendent is of the opinion that,

Report to
Minister

- (a) the assets of the insurer are not sufficient to justify its continuance in business or to provide for its obligations;
- (b) the insurer is persistently failing to comply with section 39a; or
- (c) the insurer is failing to comply with section 28,

the Superintendent shall so report to the Minister.

(2) Clause 40 (2) (b) of the said Act is repealed and the following substituted therefor:

- (b) prescribe a time within which the insurer shall correct any failure or deficiency set out in the report of the Superintendent under subsection (1).

(3) Subsection 40 (3) of the said Act is amended by striking out “fails to make good any deficiency of assets” in the first and second lines and inserting in lieu thereof “does not correct any failure or deficiency”.

(4) Subsection 40 (4) of the said Act is repealed and the following substituted therefor:

(4) For the purpose of this section, the Minister may appoint such persons as the Minister considers necessary to appraise the assets and liabilities of the insurer and to determine the adequacy of its reserves and to report upon its condition.

Appointment
of
appraisers,
etc.

7. The said Act is further amended by adding thereto the following section:

Authority of
Minister

97a. The Minister, with the approval of the Lieutenant Governor in Council, may enter into agreements with a compensation association related to the conduct of a plan to compensate policyholders and eligible claimants of insolvent insurers.

8.—(1) Section 98 of the said Act is amended by adding thereto the following clauses:

- (aa) prescribing forms and providing for their use;
- (ab) designating one or more bodies corporate or associations as compensation associations and designating any such body corporate or association as a compensation association for one or more classes of insurance;
- (ac) designating classes of insurance for the purposes of clause 24a (1) (l);
- (ad) designating insurers for the purposes of subsection 24a (3);
- (ae) prescribing ratios, percentages, amounts and calculations for the purposes of subsection 39a (1) and any such regulation may prescribe different ratios, percentages, amounts and calculations for one or more classes of insurance and for insurers whose business is limited to that of reinsurance;
- (af) exempting any insurer or class of insurers from any regulation made under clause (ae) subject to such terms and conditions as may be set out in the regulations;
- (ag) prescribing a maximum proportion of risks that may be reinsured with insurers that are not licensed under this Act and such proportion may vary for different classes of insurance.

(2) The said section 98 is further amended by adding thereto the following subsection:

Effective
date of
regulations

(2) A regulation made under clause (ae) does not come into force until the day thirty days after it is filed with the Registrar of Regulations or such later day as may be set out in the regulation.

9. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

10. The short title of this Act is the *Insurance Amendment Act, 1986*. Short title

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Bill 109

An Act to amend the Health Disciplines Act

The Hon. M. Elston
Minister of Health



1st Reading April 22nd, 1986
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The Bill amends Part IV (Nursing) of the *Health Disciplines Act*.

SECTION 1. Section 73 of the Act authorizes the making of regulations. The new clause will authorize the making of regulations requiring and governing records of nursing services provided by members of the College of Nurses of Ontario.

SECTION 2. Section 82 of the Act relates to the Discipline Committee. The section is re-enacted to increase the composition of the Committee from ten members of the Council, including two persons appointed to the Council by the Lieutenant Governor in Council. The Committee is increased to twenty-four members who are intended to operate in panels of five. The Committee will be composed of twelve members of the College and twelve members of the Council of whom four are persons appointed to the Council by the Lieutenant Governor in Council.

SECTION 3. New section 84a of the Act provides for investigations of members for professional misconduct or incompetence. Investigators will be appointed by the Director with the approval of the Executive Committee. The section is similar to section 64 in Part III (Medicine).

SECTION 4. New section 86a of the Act requires members of the College to preserve secrecy with respect to matters that come to their knowledge in the course of their work. The section also prevents members being required to give testimony or provide records in any proceeding other than a proceeding under the Act. The section is similar to section 65 in Part III (Medicine).

SECTION 5. Section 88 of the Act is the penalty section of Part IV. New subsection 88 (3) provides a penalty for obstructing an investigator who is acting under new section 84a set out in this Bill. The subsection is similar to subsection 67 (3) in Part III (Medicine).

Bill 109

1986

An Act to amend the Health Disciplines Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 73 of the *Health Disciplines Act*, being chapter 196 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

- (ma) requiring members to establish and maintain records of nursing services provided by them, prescribing the information that must be entered by members in nursing records maintained by them, prescribing classes of records of nursing services, prescribing periods of time for or circumstances in which members must retain specified classes of nursing records, specifying when and to whom members must deliver records of nursing services and governing custody of and access to specified classes of nursing records maintained by members.

2.—(1) Section 82 of the said Act is repealed and the following substituted therefor:

82.—(1) The Discipline Committee shall be composed of, Discipline Committee

- (a) twelve persons who are members of the College; and
- (b) twelve persons who are members of the Council, of whom four shall be persons appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall appoint one of the members of the Chairman
Discipline Committee to be chairman.

(3) The chairman of the Discipline Committee may assign a Panels
panel of five members of the Committee to hold a hearing, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Chairman
of panel

(4) Every panel of the Discipline Committee shall be chaired either by the chairman of the Discipline Committee or by a member of the Discipline Committee designated by the chairman.

Disability
of appointed
member

(5) Where a panel of the Discipline Committee commences a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding the member's absence.

Quorum

(6) Three members of a panel assigned under subsection (3), of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum for a hearing and all disciplinary decisions require the vote of a majority of members of the Discipline Committee presiding at the hearing, but in the event of a tie vote, the chairman shall have a second or casting vote.

Reference
by Council
or Executive
Committee

(7) Notwithstanding section 81, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

Transitional

(2) Where a proceeding was commenced before the Discipline Committee before the coming into force of subsection (1), section 82 of the said Act as it existed immediately before the coming into force of subsection (1), continues to apply in respect of the proceeding and, for the purpose, subsection (1) shall be deemed not to have come into force.

3. The said Act is amended by adding thereto the following section:

Investigation
of members

84a.—(1) Where the Director believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence, the Director may, with the approval of the Executive Committee, by order appoint one or more persons to make an investigation to ascertain whether such act has occurred, and the person appointed shall report the result of the investigation to the Director.

Powers of
investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may, upon production of proof of his or her appointment, enter at any reasonable time the premises where the member is providing or has provided nursing services and examine books, records, documents and things relevant to the subject-

matter of the investigation and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

R.S.O. 1980.
c. 411

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from the person or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Obstruction
of
investigator

(4) Where a justice of the peace is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under subsection (2), issue an order authorizing the person making the investigation, together with such police officer or officers as the person calls upon for assistance, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night.

Search
warrant

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection (2) or (4) relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

Removal of
books, etc.

(6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

Admissibility
of copies

(7) The Director shall report the results of the investigation to the Council or the Executive Committee or to such other committee as the Director considers appropriate.

Report
of the
Director

4. The said Act is further amended by adding thereto the following section:

Matters
confidential

86a.—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 84a, and any member of the Council or a committee, shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties, employment, inquiry or investigation under section 84a and shall not communicate any such matters to any other person except,

- (a) in connection with,
 - (i) the administration of this Act and the regulations under this Act,
 - (ii) the administration of any Part of this Act and the regulations and by-laws under any Part of this Act, or
 - (iii) any proceedings under this Act or any Part of this Act or the regulations under this Act or any Part of this Act;
- (b) as may be required for the enforcement of the *Health Insurance Act*;
- (c) to his or her counsel; or
- (d) with the consent of the person to whom the information relates.

R.S.O. 1980,
c. 197

Evidence
in civil
suit

(2) No person to whom subsection (1) applies shall be required to give testimony or to produce any book, record, document or thing in any proceeding with regard to information the person has obtained in the course of his or her duties, employment, inquiry or investigation except in a proceeding under this Act or any Part of this Act or any regulation or by-law under this Act or any Part of this Act.

5. Section 88 of the said Act is amended by adding thereto the following subsection:

Idem

(3) Every person who obstructs a person appointed to make an investigation under section 84a in the course of his or her duties is guilty of an offence and on conviction is liable to a fine not exceeding \$2,000.

6. This Act comes into force on the day it receives Royal Assent. Commence-
ment

7. The short title of this Act is the *Health Disciplines Amendment Act, 1986*. Short title

Bill 109

(Chapter 34
Statutes of Ontario, 1986)

An Act to amend the Health Disciplines Act

The Hon. M. Elston
Minister of Health



<i>1st Reading</i>	April 22nd, 1986
<i>2nd Reading</i>	July 10th, 1986
<i>3rd Reading</i>	July 10th, 1986
<i>Royal Assent</i>	July 10th, 1986

Bill 109

1986

An Act to amend the Health Disciplines Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 73 of the *Health Disciplines Act*, being chapter 196 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

- (ma) requiring members to establish and maintain records of nursing services provided by them, prescribing the information that must be entered by members in nursing records maintained by them, prescribing classes of records of nursing services, prescribing periods of time for or circumstances in which members must retain specified classes of nursing records, specifying when and to whom members must deliver records of nursing services and governing custody of and access to specified classes of nursing records maintained by members.

2.—(1) Section 82 of the said Act is repealed and the following substituted therefor:

82.—(1) The Discipline Committee shall be composed of, Discipline Committee

- (a) twelve persons who are members of the College; and
- (b) twelve persons who are members of the Council, of whom four shall be persons appointed to the Council by the Lieutenant Governor in Council.

(2) The Council shall appoint one of the members of the Chairman
Discipline Committee to be chairman.

(3) The chairman of the Discipline Committee may assign a Panels
panel of five members of the Committee to hold a hearing, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Chairman
of panel

(4) Every panel of the Discipline Committee shall be chaired either by the chairman of the Discipline Committee or by a member of the Discipline Committee designated by the chairman.

Disability
of appointed
member

(5) Where a panel of the Discipline Committee commences a hearing and the member thereof who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding the member's absence.

Quorum

(6) Three members of a panel assigned under subsection (3), of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum for a hearing and all disciplinary decisions require the vote of a majority of members of the Discipline Committee presiding at the hearing, but in the event of a tie vote, the chairman shall have a second or casting vote.

Reference
by Council
or Executive
Committee

(7) Notwithstanding section 81, the Council or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a member.

Transitional

(2) Where a proceeding was commenced before the Discipline Committee before the coming into force of subsection (1), section 82 of the said Act as it existed immediately before the coming into force of subsection (1), continues to apply in respect of the proceeding and, for the purpose, subsection (1) shall be deemed not to have come into force.

3. The said Act is amended by adding thereto the following section:

Investigation
of members

84a.—(1) Where the Director believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence, the Director may, with the approval of the Executive Committee, by order appoint one or more persons to make an investigation to ascertain whether such act has occurred, and the person appointed shall report the result of the investigation to the Director.

Powers of
investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may, upon production of proof of his or her appointment, enter at any reasonable time the premises where the member is providing or has provided nursing services and examine books, records, documents and things relevant to the subject-

matter of the investigation and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

R.S.O. 1980,
c. 411

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from the person or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Obstruction
of
investigator

(4) Where a justice of the peace is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under subsection (2), issue an order authorizing the person making the investigation, together with such police officer or officers as the person calls upon for assistance, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night.

Search
warrant

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection (2) or (4) relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

Removal of
books, etc.

(6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

Admissibility
of copies

(7) The Director shall report the results of the investigation to the Council or the Executive Committee or to such other committee as the Director considers appropriate.

Report
of the
Director

4. The said Act is further amended by adding thereto the following section:

Matters
confidential

86a.—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 84a, and any member of the Council or a committee, shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties, employment, inquiry or investigation under section 84a and shall not communicate any such matters to any other person except,

- (a) in connection with,
 - (i) the administration of this Act and the regulations under this Act,
 - (ii) the administration of any Part of this Act and the regulations and by-laws under any Part of this Act, or
 - (iii) any proceedings under this Act or any Part of this Act or the regulations under this Act or any Part of this Act;
- (b) as may be required for the enforcement of the *Health Insurance Act*;
- (c) to his or her counsel; or
- (d) with the consent of the person to whom the information relates.

R.S.O. 1980,
c. 197

Evidence
in civil
suit

(2) No person to whom subsection (1) applies shall be required to give testimony or to produce any book, record, document or thing in any proceeding with regard to information the person has obtained in the course of his or her duties, employment, inquiry or investigation except in a proceeding under this Act or any Part of this Act or any regulation or by-law under this Act or any Part of this Act.

5. Section 88 of the said Act is amended by adding thereto the following subsection:

Idem

(3) Every person who obstructs a person appointed to make an investigation under section 84a in the course of his or her duties is guilty of an offence and on conviction is liable to a fine not exceeding \$2,000.

6. This Act comes into force on the day it receives Royal Assent. Commence-
ment

7. The short title of this Act is the *Health Disciplines Amendment Act, 1986*. Short title

Bill 110

An Act to amend the Municipal Act

Mr. Breagh

1st Reading June 26th, 1986

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The purpose of the Bill is to authorize municipalities to provide retired employees with a range of benefits including health insurance, nursing and dental services and accident and sickness insurance.

Bill 110**1986****An Act to amend the Municipal Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause (a) of paragraph 48 of section 208 of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (a) In this paragraph, “employee” means an employee as defined in paragraph 46 and includes a retired employee.

2. Clause (a) of paragraph 49 of section 208 of the said Act is repealed and the following substituted therefor:

- (a) In this paragraph, “employee” means an employee as defined in paragraph 46 and includes a retired employee.

3. This Act comes into force on the day it receives Royal Assent. Commence-
ment

4. The short title of this Act is the *Municipal Amendment Act, 1986*. Short title

Bill 111

An Act to amend the Family Law Act, 1986

The Hon. I. Scott
Attorney General

1st Reading July 2nd, 1986
2nd Reading
3rd Reading
Royal Assent

Projet de loi 111

Loi modifiant la Loi de 1986 sur le droit de la famille

L'honorable I. Scott
procureur général

1^{re} lecture 2 juillet 1986
2^e lecture
3^e lecture
sanction royale



EXPLANATORY NOTES

SECTION 1.—Subsection 1. Clause (c) of the definition of “property” in subsection 4 (1) now reads as follows:

(c) in the case of a spouse's rights under a pension plan that have vested under clause 20 (1) (a) of the Pension Benefits Act, the employer's contributions to the spouse's pension.

The amendment makes it clear that all pension plans are covered, including those that are not governed by the *Pension Benefits Act* and that the total amount of a pension plan is covered, including all contributions regardless of the source.

Subsection 2. Paragraph 4 of subsection 4 (2) now reads as follows:

4. Proceeds or a right to proceeds of a life insurance policy as defined in the Insurance Act.

The amendment would provide that only life insurance proceeds payable on death are excluded property, not other categories of life insurance proceeds such as annuity payments payable to the insured.

SECTION 2.—Subsections 1 and 2. The amendments would provide that where a surviving spouse elects to receive the section 5 entitlement, any life insurance proceeds or a lump sum payment under a pension or similar plan received by the surviving spouse shall be credited against his or her entitlement under the Act, unless a written designation by the deceased spouse provides that the proceeds or payment are in addition to the entitlement under section 5.

Subsection 3. The surviving spouse's election to receive the entitlement under the Act is to be in the prescribed form.

NOTES EXPLICATIVES

ARTICLE 1—Paragraphe 1 L'alinéa c) de la définition du terme «bien» au paragraphe 4 (1) est maintenant le suivant :

c) dans le cas du droit du conjoint, en vertu d'un régime de retraite, qui a été acquis aux termes de l'alinéa 20 (1) a) de la Loi sur les régimes de retraite, les contributions de l'employeur à la retraite du conjoint.

La modification précise bien que tous les régimes de retraite sont pris en considération, y compris ceux qui ne sont pas régis par la *Loi sur les régimes de retraite* et que la somme globale du régime de retraite est prise en considération, y compris toutes les contributions, quelle que soit leur source.

Paragraphe 2 La disposition 4 du paragraphe 4 (2) est maintenant la suivante :

4. Le produit d'une police d'assurance-vie au sens de la Loi sur les assurances, ou le droit de le recevoir.

La modification prévoit que seules les sommes dues d'une assurance-vie à verser lors du décès constituent des biens exclus, et non pas d'autres catégories de sommes dues d'assurance-vie comme les arrérages de rente versés à l'assuré.

ARTICLE 2—Paragraphe 1 et 2 Les modifications prévoient que lorsque le conjoint survivant choisit de jouir du droit prévu à l'article 5, les sommes dues d'une assurance-vie ou le versement forfaitaire fait en vertu d'un régime de retraite ou d'un autre régime semblable qui sont perçus par le conjoint survivant sont portés au crédit de son droit en vertu de la loi. Toutefois, ce n'est pas le cas si la désignation écrite faite par le conjoint décédé prévoit que le conjoint survivant jouit des sommes dues ou du versement outre le droit prévu à l'article 5.

Paragraphe 3 Le choix du conjoint survivant de jouir de son droit en vertu de la Loi doit être fait selon la formule prescrite.

Bill 111**1986****An Act to amend the Family Law Act, 1986**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause (c) of the definition of “property” in subsection 4 (1) of the *Family Law Act, 1986*, being chapter 4, is repealed and the following substituted therefor:

- (c) in the case of a spouse's rights under a pension plan that have vested, the spouse's interest in the plan including contributions made by other persons.

(2) Paragraph 4 of subsection 4 (2) of the said Act is repealed and the following substituted therefor:

- 4. Proceeds or a right to proceeds of a policy of life insurance, as defined in the *Insurance Act*, that are payable on the death of the life insured.

R.S.O. 1980,
c. 218

2.—(1) Subsection 6 (6) of the said Act is repealed and the following substituted therefor:

Insurance,
etc.

- (6) Where a surviving spouse,

- (a) is the beneficiary,

- (i) of a policy of life insurance, as defined in the *Insurance Act*, that was taken out on the life of the deceased spouse and owned by the deceased spouse or was taken out on the lives of a group of which he or she was a member, or

- (ii) of a lump sum payment provided under a pension or similar plan on the death of the deceased spouse; and

- (b) elects or has elected to receive the entitlement under section 5,

Projet de loi 111**1986****Loi modifiant la
Loi de 1986 sur le droit de la famille**

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 (1) L'alinéa c) de la définition du terme «bien» au paragraphe 4 (1) de la *Loi de 1986 sur le droit de la famille*, qui constitue le chapitre 4, est abrogé et remplacé par ce qui suit :

- c) dans le cas du droit du conjoint, en vertu d'un régime de retraite, qui a été acquis, le droit du conjoint y compris les contributions des autres personnes.

(2) La disposition 4 du paragraphe 4 (2) de la Loi est abrogée et remplacée par ce qui suit :

- 4. Les sommes dues d'une police d'assurance-vie au sens de la *Loi sur les assurances* qui sont à verser lors du décès de l'assuré, ou le droit de les recevoir.

L.R.O. 1980,
chap. 218

2 (1) Le paragraphe 6 (6) de la Loi est abrogé et remplacé par ce qui suit :

- (6) Si le conjoint survivant :

Assurances,
etc.

- a) est le bénéficiaire, selon le cas :
 - (i) d'une police d'assurance-vie, au sens de la *Loi sur les assurances*, qui a été souscrite sur la tête du conjoint décédé et dont ce dernier était propriétaire ou qui a été souscrite sur les têtes d'un groupe de personnes dont était membre le conjoint décédé,
 - (ii) d'un versement forfaitaire, fait en vertu d'un régime de retraite, ou d'un autre régime semblable, lors du décès du conjoint décédé;

the payment under the policy or plan shall be credited against the surviving spouse's entitlement under section 5, unless a written designation by the deceased spouse provides that the surviving spouse shall receive payment under the policy or plan in addition to the entitlement under section 5.

Idem

(6a) If a surviving spouse,

- (a) elects or has elected to receive the entitlement under section 5; and
- (b) receives payment under a life insurance policy or a lump sum payment provided under a pension or similar plan that is in excess of the entitlement under section 5,

and there is no written designation by the deceased spouse described in subsection (6), the deceased spouse's personal representative may recover the excess amount from the surviving spouse.

(2) Clause 6 (8) (b) of the said Act is repealed.

(3) Subsection 6 (9) of the said Act is amended by inserting after "election" in the first line "shall be in the form prescribed by the regulations made under this Act and".

3. Subsections 6 (6) and (6a) of the said Act, as set out in subsection 2 (1) of this Act, apply with respect to deaths that occurred before or occur after the coming into force of this Act.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Family Law Amendment Act, 1986*.

- b) choisit ou a choisi de jouir du droit prévu à l'article 5,

le versement fait en vertu de la police ou du régime est porté au crédit du droit du conjoint survivant prévu à l'article 5, à moins qu'une désignation écrite faite par le conjoint décédé ne prévoie que le conjoint survivant perçoit le versement en vertu de la police ou du régime outre le droit prévu à l'article 5.

(6a) Si le conjoint survivant :

Idem

- a) choisit ou a choisi de jouir du droit prévu à l'article 5;
- b) perçoit un versement fait en vertu d'une police d'assurance-vie ou un versement forfaitaire fait en vertu d'un régime de retraite ou d'un autre régime semblable qui dépasse le droit prévu à l'article 5,

et qu'il n'existe pas de désignation écrite faite par le conjoint décédé décrite au paragraphe (6), le représentant successoral du conjoint décédé peut recouvrer le montant excédentaire du conjoint survivant.

(2) L'alinéa 6 (8) b) de la Loi est abrogé.

(3) Le paragraphe 6 (9) de la Loi est modifié par adjonction, après "est" à la première ligne, des mots "rédigé selon la formule prescrite par les règlements pris en application de la présente loi et".

3 Les paragraphes 6 (6) et (6a) de la Loi, tels qu'ils sont indiqués au paragraphe 2 (1) de la présente loi, s'appliquent relativement au décès qui se produisent avant ou après l'entrée en vigueur de la présente loi.

4 La présente loi entre en vigueur le jour où elle reçoit la sanction royale. Entrée en vigueur

5 Le titre abrégé de la présente loi est *Loi de 1986 modifiant la Loi sur le droit de la famille*. Titre abrégé

Bill 111

2ND SESSION, 33RD LEGISLATURE, ONTARIO
35 ELIZABETH II, 1986

Bill 111

*(Chapter 35
Statutes of Ontario, 1986)*

**An Act to amend the
Family Law
Act, 1986**

The Hon. I. Scott
Attorney General

<i>1st Reading</i>	July 2nd, 1986
<i>2nd Reading</i>	July 10th, 1986
<i>3rd Reading</i>	July 10th, 1986
<i>Royal Assent</i>	July 10th, 1986

Projet de loi 111

2^e SESSION, 33^e LÉGISLATURE, ONTARIO
35 ELIZABETH II, 1986

Projet de loi 111

*(Chapitre 35
Lois de l'Ontario de 1986)*

**Loi modifiant la
Loi de 1986 sur le droit
de la famille**

L'honorable I. Scott
procureur général

<i>1^{re} lecture</i>	2 juillet 1986
<i>2^e lecture</i>	10 juillet 1986
<i>3^e lecture</i>	10 juillet 1986
<i>sanction royale</i>	10 juillet 1986

Bill 111**1986****An Act to amend the Family Law Act, 1986**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause (c) of the definition of “property” in subsection 4 (1) of the *Family Law Act, 1986*, being chapter 4, is repealed and the following substituted therefor:

- (c) in the case of a spouse’s rights under a pension plan that have vested, the spouse’s interest in the plan including contributions made by other persons.

(2) Paragraph 4 of subsection 4 (2) of the said Act is repealed and the following substituted therefor:

- 4. Proceeds or a right to proceeds of a policy of life insurance, as defined in the *Insurance Act*, that are payable on the death of the life insured.

R.S.O. 1980,
c. 218

2.—(1) Subsection 6 (6) of the said Act is repealed and the following substituted therefor:

Insurance,
etc.

- (6) Where a surviving spouse,

- (a) is the beneficiary,

- (i) of a policy of life insurance, as defined in the *Insurance Act*, that was taken out on the life of the deceased spouse and owned by the deceased spouse or was taken out on the lives of a group of which he or she was a member, or

- (ii) of a lump sum payment provided under a pension or similar plan on the death of the deceased spouse; and

- (b) elects or has elected to receive the entitlement under section 5,

Projet de loi 111**1986****Loi modifiant la
Loi de 1986 sur le droit de la famille**

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 (1) L'alinéa c) de la définition du terme «bien» au paragraphe 4 (1) de la *Loi de 1986 sur le droit de la famille*, qui constitue le chapitre 4, est abrogé et remplacé par ce qui suit :

- c) dans le cas du droit du conjoint, en vertu d'un régime de retraite, qui a été acquis, le droit du conjoint y compris les contributions des autres personnes.

(2) La disposition 4 du paragraphe 4 (2) de la Loi est abrogée et remplacée par ce qui suit :

- 4. Les sommes dues d'une police d'assurance-vie au sens de la *Loi sur les assurances* qui sont à verser lors du décès de l'assuré, ou le droit de les recevoir.

L.R.O. 1980,
chap. 218

2 (1) Le paragraphe 6 (6) de la Loi est abrogé et remplacé par ce qui suit :

(6) Si le conjoint survivant :

Assurances,
etc.

- a) est le bénéficiaire, selon le cas :

- (i) d'une police d'assurance-vie, au sens de la *Loi sur les assurances*, qui a été souscrite sur la tête du conjoint décédé et dont ce dernier était propriétaire ou qui a été souscrite sur les têtes d'un groupe de personnes dont était membre le conjoint décédé,

- (ii) d'un versement forfaitaire, fait en vertu d'un régime de retraite, ou d'un autre régime semblable, lors du décès du conjoint décédé;

the payment under the policy or plan shall be credited against the surviving spouse's entitlement under section 5, unless a written designation by the deceased spouse provides that the surviving spouse shall receive payment under the policy or plan in addition to the entitlement under section 5.

Idem

(6a) If a surviving spouse,

- (a) elects or has elected to receive the entitlement under section 5; and
- (b) receives payment under a life insurance policy or a lump sum payment provided under a pension or similar plan that is in excess of the entitlement under section 5,

and there is no written designation by the deceased spouse described in subsection (6), the deceased spouse's personal representative may recover the excess amount from the surviving spouse.

(2) Clause 6 (8) (b) of the said Act is repealed.

(3) Subsection 6 (9) of the said Act is amended by inserting after "election" in the first line "shall be in the form prescribed by the regulations made under this Act and".

3. Subsections 6 (6) and (6a) of the said Act, as set out in subsection 2 (1) of this Act, apply with respect to deaths that occurred before or occur after the coming into force of this Act.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Family Law Amendment Act, 1986*.

- b) choisit ou a choisi de jouir du droit prévu à l'article 5,

le versement fait en vertu de la police ou du régime est porté au crédit du droit du conjoint survivant prévu à l'article 5, à moins qu'une désignation écrite faite par le conjoint décédé ne prévoie que le conjoint survivant perçoit le versement en vertu de la police ou du régime outre le droit prévu à l'article 5.

(6a) Si le conjoint survivant :

Idem

- a) choisit ou a choisi de jouir du droit prévu à l'article 5;
- b) perçoit un versement fait en vertu d'une police d'assurance-vie ou un versement forfaitaire fait en vertu d'un régime de retraite ou d'un autre régime semblable qui dépasse le droit prévu à l'article 5,

et qu'il n'existe pas de désignation écrite faite par le conjoint décédé décrite au paragraphe (6), le représentant successoral du conjoint décédé peut recouvrer le montant excédentaire du conjoint survivant.

(2) L'alinéa 6 (8) b) de la Loi est abrogé.

(3) Le paragraphe 6 (9) de la Loi est modifié par adjonction, après "est" à la première ligne, des mots "rédigé selon la formule prescrite par les règlements pris en application de la présente loi et".

3 Les paragraphes 6 (6) et (6a) de la Loi, tels qu'ils sont indiqués au paragraphe 2 (1) de la présente loi, s'appliquent relativement aux décès qui se produisent avant ou après l'entrée en vigueur de la présente loi.

4 La présente loi entre en vigueur le jour où elle reçoit la sanction royale.

Entrée en
vigueur

5 Le titre abrégé de la présente loi est *Loi de 1986 modifiant la Loi sur le droit de la famille*.

Titre abrégé

Bill 112

An Act respecting the Enforcement of Statutes related to the Environment

The Hon. J. Bradley
Minister of the Environment

1st Reading July 3rd, 1986
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTES

The Bill restructures the enforcement provisions of the *Environmental Protection Act*, the *Ontario Water Resources Act* and the *Pesticides Act*.

Part I relates to the *Environmental Protection Act*.

SECTION 1. The term “analyst” is defined. The term is used in sections 4 and 135 of the Act, both re-enacted in this Bill. The term “document” is added and takes into account modern methods of information storage.

SECTION 2. Section 4 of the Act authorizes the appointment of Directors for the purposes of the Act and the regulations. The section is re-enacted to widen the power of appointment to include the members of classes of persons and to provide for the appointment of analysts and the designation of provincial officers.

SECTION 3. Section 6 of the Act authorizes the Director to issue a control order following upon a report of a provincial officer containing certain findings. The effect of the amendment is to make it clear that the report of the provincial officer must first be served on the person responsible for the source of the contaminant and not merely filed with the Minister.

SECTION 4. Section 47 of the Act is the offence section for Part V—Waste Management. The repeal of the section makes section 146 of the Act apply to the Part.

SECTION 5. Section 78 of the Act is the offence section for Part VIII—Litter. The section is re-enacted to separate offences and penalties related to litter from those related to packaging and containers, to increase the maximum fines and to provide for higher maximum fines for convicted corporations.

SECTION 6. Section 125 provides for the designation of provincial officers; it is repealed and that authority is now found in section 4 of the Act (see the note to section 2 of the Bill).

SECTION 7. Subsection 126 (2) is repealed to remove the concept of filing provincial officer's reports.

SECTION 8. Section 135 of the Act provides for the admission of documents as evidence in proceedings. The section is re-enacted to widen the range of documents (now termed “official documents”).

SECTION 9. Section 141 of the Act relates to certificates of analysis as evidence in proceedings. The repeal is complementary to the re-enactment of section 135.

SECTION 10. New subsection 144 (2) of the Act enables a court that convicts a person of an offence under the Act to make an order, upon the application of the Minister, prohibiting the continuation or repetition of the offence by the person convicted.

SECTION 11. Section 146 of the Act is the general offence and penalty section. The section is amended to increase the maximum fines in the case of a corporation and to define what is meant by “subsequent conviction”, for which a greater penalty may be imposed.

SECTION 12. New section 146a of the Act provides more serious penalties for offences against sections of the Act related to actual polluting. The penalties are more serious than the penalties in section 146, the general penalty section of the Act. New section 146a provides for the option of imprisonment for not more than one year and for greater fines.

New section 146b enables a court to increase a fine by an amount equal to the monetary benefit obtained by the commission of the offence.

New section 146c enables a court that convicts a person under section 146 to make an order, upon the application of the Minister, requiring the person to take the action specified in the order to prevent, eliminate and reduce the effects of the offence on the natural environment and to restore the natural environment.

New section 146d of the Act provides that on the application of the Director an order may be made under the *Provincial Offences Act* suspending any licence held under the Act by a person who is in default of payment of a fine imposed for a contravention of this Act, the *Ontario Water Resources Act* or the *Pesticides Act*.

New section 146e of the Act deems an act or thing done in the course of employment by an officer, official, employee or agent of a corporation to be the act or thing done or omitted by the corporation or other employer.

SECTION 13. Section 147 of the Act provides specific penalties where a person is convicted of an offence in respect of hauled liquid industrial waste or hazardous waste. The section is amended to extend the optional penalty of imprisonment (now applicable only in cases under subsection 16 (1) of the *Ontario Water Resources Act*) to cases under the *Environmental Protection Act* or the regulations under that Act, to increase the penalties for actual polluting and to differentiate between individuals and corporations.

Part II relates to the *Ontario Water Resources Act*.

SECTION 14. The terms “analyst” and “document” are defined.

SECTION 15. Subsection 2 (2) of the Act assigns ministerial responsibility for sections 45 to 48 of the Act. These sections relate to plumbing.

SECTIONS 16 and 23. The amendments and repeals are complementary to the new enforcement provisions of subsection 56 (2) and sections 66 to 72 of the Act, as set out in this Bill.

SECTION 24.—Subsections 1 and 3. The changes are complementary to the new enforcement provisions.

Subsections 2 and 4. Subsections 23 (5) and (8) of the Act are re-enacted to remove the exemption of municipalities and to complement the new enforcement provisions.

SECTION 25.—Subsection 1. The repeal is complementary to the new enforcement provisions.

Subsection 2. Subsection 24 (5) of the Act is re-enacted to remove the exemption of municipalities and to complement the new enforcement provisions.

SECTION 26. The amendment is complementary to the new enforcement provisions.

SECTION 27. Subsection 32 (2) of the Act is re-enacted to remove the exemption of municipalities and to complement the new enforcement provisions.

SECTIONS 28 and 29. The amendment and the repeal are complementary to the new enforcement provisions.

SECTION 30.—Subsection 1. Subsection 44 (2) of the Act relates to the making of regulations related to plumbing. The amendment is complementary to the re-enactment of subsection 2 (2) of the Act, set out in this Bill.

Subsection 2. The amendment retains the existing fines for offences related to plumbing.

SECTIONS 31 to 33. The amendment and the repeals are complementary to the new enforcement provisions.

SECTION 34. New subsection 56 (2) of the Act enables the court that convicts a person to make an order prohibiting the continuation or repetition of the act or omission for which the person is convicted. The subsection is similar to existing subsection 56 (1) of the Act, but does not require the commencement of a separate proceeding.

SECTION 35. Section 59 of the Act makes the giving of false information on an application or return an offence; the amendment is complementary to the new enforcement provisions.

SECTION 36. New section 66 of the Act is the new general offence section.

New section 67 of the Act sets out the basic penalties related to individuals, corporations and directors and officers of corporations and defines the meaning of the expression "subsequent conviction".

New section 68 of the Act sets out penalties related to actual pollution. The section provides for imprisonment for not more than one year for individuals and higher fines for corporations.

New section 69 of the Act enables the court to increase a fine by an amount equal to the monetary benefit obtained by the commission of the offence.

New section 70 of the Act enables the court, upon application by the Minister, to order a convicted person to take specified action to protect and to restore the natural environment.

New section 71 of the Act deals with the suspension of a licence; see the note to section 11 of the Bill relating to new section 146d of the *Environmental Protection Act*.

New section 72 of the Act specifies that an action by an officer, employee or agent of a municipality, a corporation or other employer in the course of employment is deemed to be the action of the municipality, corporation or other employer for the purposes of the Act and the regulations.

New section 73 of the Act relates to the use of official documents as evidence in proceedings.

Part III relates to the *Pesticides Act*.

SECTION 37. The terms "analyst" and "document" are defined.

SECTION 38. Section 8 of the Act, which relates to the liability of an employer, is re-enacted to be consistent with similar sections set out in this Bill for the *Environmental Protection Act* (section 146e) and the *Ontario Water Resources Act* (section 72).

SECTION 39. Section 34, the general offence and penalty section of the Act, is replaced with a new basic offence section.

SECTION 40. Section 34a of the Act is now renumbered as section 34f.

SECTION 41. New sections 34a to 34e are added to the Act.

New section 34a is the basic penalty section. The maximum penalties for an individual are unchanged at \$5,000 per day on a first conviction and \$10,000 per day on each subsequent conviction. The maximum penalties per day for a corporation will be \$10,000 and \$20,000. Also, directors, officers, employees and agents of a convicted corporation may be guilty of an offence and liable to maximum fines of \$5,000 on a first conviction and \$10,000 on each subsequent conviction.

New section 34b enables the court to increase a fine by an amount equal to the monetary benefit obtained by the commission of the offence.

New section 34c provides an additional penalty of imprisonment for not more than one year for contravention of section 4 of the Act (actual pollution) or of a stop order. For a corporation, the maximum fines are increased to \$25,000 and \$50,000 per day for contravention of or failure to comply with a stop order.

New section 34d authorizes the court, upon application by the Minister, to order a person convicted of an offence under the Act to take the action specified by the court to protect and restore the natural environment.

New section 34e deals with the suspension of a licence; see the note to section 11 of the Bill relating to new section 146d of the *Environmental Protection Act*.

SECTION 42. Section 36 of the Act is replaced with a more detailed section related to documentary proof.

SECTION 43. New subsection 37 (3) of the Act is similar to new subsection 144 (2) of the *Environmental Protection Act*, set out in section 9 of this Bill, and new subsection 56 (2) of the *Ontario Water Resources Act*, set out in section 35 of this Bill.

Bill 112

1986

**An Act respecting the Enforcement of
Statutes related to the Environment**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

Environmental Protection Act

1. Subsection 1 (1) of the *Environmental Protection Act*, being chapter 141 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 52, section 1, is further amended by adding thereto the following clauses:

(aa) “analyst” means an analyst appointed under this Act;

(cb) “document” includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device.

2. Section 4 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 3, is repealed and the following substituted therefor:

4.—(1) The Minister may appoint in writing as Directors, Directors

- (a) such employees of the Ministry;
- (b) the members of such classes of employees of the Ministry; and
- (c) subject to the approval of the Lieutenant Governor in Council, such other persons or the members of such other classes of persons,

or any of them, as the Minister considers necessary in respect of such sections of this Act and in respect of such of the regulations or sections of the regulations as are set out in the appointments.

Analysts

(2) The Minister may in writing appoint as analysts or designate as provincial officers,

- (a) such employees of the Ministry;
- (b) the members of such classes of employees of the Ministry;
- (c) such other persons; and
- (d) the members of such classes of other persons,

or any of them, as the Minister considers necessary in respect of such sections of any Act administered by the Minister and in respect of such of the regulations or sections of the regulations under such Act as are set out in the appointments or designations.

Limitation
of authority

(3) The Minister, in an appointment or designation under subsection (1) or (2), may limit the authority of a Director, analyst or provincial officer in such manner as the Minister considers necessary or advisable.

3. Section 6 of the said Act is amended by striking out “filed as provided by section 126” in the first and second lines and inserting in lieu thereof “a copy of which has been served upon the person responsible for a source of contaminant”.

4. Section 47 of the said Act is repealed.

5. Section 78 of the said Act is repealed and the following substituted therefor:

Offence

78.—(1) Every person who fails to comply with a provision of this Part or a provision of a regulation relating to this Part that relates to litter is guilty of an offence and is liable on conviction to a fine of not more than \$500 on a first conviction and not more than \$1,000 on each subsequent conviction.

Idem,
corporation

(2) Where a corporation is convicted of an offence under subsection (1), the maximum fine that may be imposed is \$1,000 on a first conviction and \$2,000 on each subsequent conviction and not as provided in subsection (1).

78a.—(1) Every person who fails to comply with a provision of this Part or a provision of a regulation relating to this Part that relates to packaging or containers rather than to litter is guilty of an offence and is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$1,000 on a first conviction and not more than \$2,000 on each subsequent conviction.

Offence

(2) Where a corporation is convicted of an offence under subsection (1), the maximum fine that may be imposed for each day or part of a day on which the offence occurs or continues is \$3,000 on a first conviction and \$6,000 on each subsequent conviction and not as provided in subsection (1).

Idem,
corporation

6. Section 125 of the said Act is repealed.

7. Subsection 126 (2) of the said Act is repealed.

8. Section 135 of the said Act is repealed and the following substituted therefor:

135.—(1) In this section, “official document” means,

Definition

- (a) an approval, certificate, consent, licence, notice, permit, order or return under this Act or the regulations;
- (b) a certificate as to service of a document mentioned in clause (a);
- (c) a certificate or report as to the analysis, description, ingredients, quality, quantity or temperature of any solid, liquid or gas or any combination of any of them;
- (d) a certificate or report as to the analysis, description, quality or quantity of any odour, heat, sound, vibration, radiation or any combination of any of them;
- (e) a certificate or report as to the custody of any solid, liquid or gas or any combination of any of them;
- (f) a certificate as to the custody of any book, record or report or as to the custody of any other document; or
- (g) a certificate as to whether or not any document or notification was received or issued by the Minister or the Ministry under this Act or the regulations.

Official
documents
as evidence

(2) An official document, other than an official document mentioned in clause (1) (c) or (d), that purports to be signed by the Minister, the Director or an employee in the Ministry shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

Idem

(3) An official document mentioned in clause (1) (c), (d) or (e) that purports to be signed by an analyst shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

9. Section 141 of the said Act is repealed.

10. Section 144 of the said Act is amended by adding thereto the following subsection:

Power to
restrain by
order upon
conviction

(2) Upon application by counsel or agent for the Minister, the court that convicts a person of an offence under this Act, in addition to any other remedy and to any other penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the act or omission for which the person is convicted.

11.—(1) Subsection 146 (1) of the said Act is repealed and the following substituted therefor:

General
offence

(1) Every person who contravenes this Act or the regulations is guilty of an offence.

Offence
re order

(1a) Every person who fails to comply with an order under this Act is guilty of an offence.

Offence
re approval,
licence or
permit, etc.

(1b) Every person who fails to comply with a term or condition of a certificate of approval or of a provisional certificate of approval or of a licence or permit under this Act or who fails to comply with the terms of a report under section 29 is guilty of an offence.

Exception

(1c) Subsections (1), (1a) and (1b) do not apply if the contravention or failure to comply is an offence under another section of this Act.

(2) Subsection 146 (2) of the said Act is amended by striking out "subsection (1)" in the first line and inserting in lieu thereof "subsections (1), (1a) and (1b)".

(3) Section 146 of the said Act is amended by adding thereto the following subsections:

(3) Every person who is guilty of an offence under subsection (1), (1a) or (1b) is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$5,000 on a first conviction and not more than \$10,000 on each subsequent conviction. Penalty

(4) Where a corporation is convicted of an offence under subsection (1), (1a) or (1b), the maximum fine that may be imposed for each day or part of a day on which the offence occurs or continues is \$10,000 on a first conviction and \$20,000 on each subsequent conviction and not as provided in subsection (3). Idem,
corporation

(5) For the purposes of determining the penalty to which a person is liable under subsection (3) or (4), a conviction of the person for an offence under subsection (1), (1a) or (1b) is a subsequent conviction if the person has previously been convicted of an offence under this Act, the *Ontario Water Resources Act* or the *Pesticides Act* or the regulations made under any of them for which the person was liable on conviction to a fine of \$5,000 or more. Subsequent
conviction

R.S.O. 1980,
cc. 361, 376

12. The said Act is amended by adding thereto the following sections:

146a.—(1) Every person convicted under section 146 for an offence under subsection 13 (1) or 119 (1) is liable, in addition to or in substitution for the penalties set out in section 146, to imprisonment for a term of not more than one year. Offences
re actual
pollution

(2) Where a corporation is convicted of an offence under a subsection mentioned in subsection (1), the maximum fine that may be imposed for each day or part of a day on which the offence occurs or continues is \$25,000 on a first conviction and \$50,000 on each subsequent conviction and not as provided in section 146. Idem,
corporation

(3) Subsection (1) does not apply unless the court is satisfied that the person was notified, before entering his or her plea, that a penalty would be sought under subsection (1). Notice

(4) For the purposes of determining the penalty to which a corporation is liable under subsection (2), a conviction of the corporation for an offence mentioned in subsection (1) is a subsequent conviction if the corporation has previously been convicted of an offence under this Act, the *Ontario Water Resources Act* or the *Pesticides Act* or the regulations made Subsequent
conviction

R.S.O. 1980,
cc. 361, 376

under any of them for which the corporation was liable on conviction to a fine of \$25,000 or more.

Penalty re
monetary
benefit

146b. The court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may increase a fine imposed upon the person by an amount equal to the amount of the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence, notwithstanding any maximum fine elsewhere provided.

Order to
protect and
restore
natural
environment

146c.—(1) Upon application by counsel or agent for the Minister, the court that convicts a person of an offence under any other section of this Act, in addition to any other penalty imposed by the court, may order the person to take all or part of the action applied for to prevent, decrease or eliminate the effects on the natural environment of the offence and to restore the natural environment within the period or periods of time specified in the order.

Other
conditions

(2) An order under subsection (1) may contain such other conditions relating to the circumstances of the offence and of the person that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to rehabilitation.

Variation
of order

(3) The court that made an order under subsection (1) may, at any time upon the application of counsel or agent for the Minister or upon the application of the person convicted or counsel or agent for the person convicted, with notice to the other party, after a hearing or, with the consent of the parties, without a hearing, make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances.

Conflict

(4) Nothing in subsection (1) authorizes the making of an order that conflicts with an order previously made under this Act by the Minister or the Director, but an order may be made under subsection (1) supplementing the provisions of an order in respect of the prevention, decrease or elimination of harm to the natural environment and the restoration of the natural environment.

Time
period

(5) The court that makes an order under subsection (1) shall specify in the order the period for which it is to remain in force, which shall not be for more than one year from the date when the order takes effect.

Continuation
in force

(6) Where a person bound by an order under subsection (1) is imprisoned, the order continues in force except in so far as

the imprisonment renders it impossible for the person to comply for the time being with the order.

146d.—(1) Where a person is in default of payment of a fine imposed upon conviction for an offence against this Act, the *Ontario Water Resources Act*, the *Pesticides Act* or the regulations made under any of them, on the application of the Director, an order may be made under subsection 70 (2) of the *Provincial Offences Act* directing that,

Suspension
for default
in payment
of fine
R.S.O. 1980,
cc. 361, 376,
400

- (a) one or more of the person's licences be suspended; and
- (b) no licence be issued to the person,

until the fine is paid.

(2) The Director shall,

Duty of
Director

- (a) on being informed of an outstanding order referred to in subsection (1), suspend the person's licence, if it is not already suspended under another order referred to in subsection (1); and
- (b) on being informed that the fine and any applicable prescribed administrative fee for the reinstatement of the licence are paid, reinstate the licence, unless the Director has been informed that,
 - (i) there is another outstanding order referred to in subsection (1) directing that the licence be suspended, or
 - (ii) the licence is suspended under any other order or under another statute.

(3) The Lieutenant Governor in Council may make regulations prescribing forms and procedures and respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this section.

Regulations

(4) In this section, "licence" means a certificate of approval or provisional certificate of approval under Part V or a licence issued under this Act or the regulations.

Definition

146e. For the purposes of this Act and the regulations, an act or thing done or omitted to be done by an officer, official, employee or agent of a corporation in the course of his or her employment or in the exercise of his or her powers or the per-

Act of
officer, etc.

formance of his or her duties shall be deemed to be also an act or thing done or omitted to be done by the corporation.

13.—(1) Subsection 147 (1) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 4, is amended by striking out “results or” in the sixth line and by striking out “the person is liable to a fine of not less than \$2,000 and not more than \$25,000 for the first offence and for each subsequent offence to a fine of not less than \$4,000 and not more than \$50,000 for every day or part thereof upon which the offence occurs or continues, and not as provided in the section under which the person is convicted” in the seven-teenth, eighteenth, nineteenth, twentieth, twenty-first and twenty-second lines and inserting in lieu thereof:

“the person is liable on conviction,

- (i) for each day or part of a day on which the offence occurs or continues to a fine of not less than \$2,000 and not more than \$5,000 on a first conviction and not less than \$4,000 and not more than \$10,000 on each subsequent conviction;
- (j) to imprisonment for a term of not more than one year; or
- (k) to both such fine and imprisonment,

instead of the fine elsewhere provided for the offence”.

(2) Subsections 147 (2), (3) and (4) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 4, are repealed and the following substituted therefor:

Idem,
corporation

(2) Where a corporation is convicted of an offence referred to in subsection (1), the maximum fine to which the corporation is liable for each day or part of a day on which the offence occurs or continues is \$25,000 for a first conviction and \$50,000 on each subsequent conviction and not as provided in subsection (1).

Where
maximum
fine doubled

(3) Where a person is convicted of an offence referred to in subsection (1) which results in any of the effects mentioned in clauses (1) (a) to (h), the maximum fine to which the person is liable is double the amount specified in subsection (1) or (2), as the case may be.

Notice

(4) Subsections (1), (2) and (3) do not apply unless the court is satisfied that the person was notified, before entering

his or her plea, that a penalty would be sought under subsection (1), (2) or (3), as the case may be.

PART II

Ontario Water Resources Act

14. Section 1 of the *Ontario Water Resources Act*, being chapter 361 of the Revised Statutes of Ontario, 1980, is amended,

(a) by relettering clause (a) as clause (aa); and

(b) by adding thereto the following clauses:

(a) “analyst” means an analyst appointed under the *Environmental Protection Act*;

R.S.O. 1980,
c. 141

(ia) “document” includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device.

15. Subsection 2 (2) of the said Act is repealed and the following substituted therefor:

(2) The Minister of Housing or such other member of the Executive Council to whom the administration may be assigned is responsible for the administration of sections 45, 46, 47 and 48.

Idem,
plumbing

16. Subsection 7 (4) of the said Act is repealed.

17. Subsection 10 (4) of the said Act is amended by striking out “and on conviction is liable to a fine or not more than \$200 for every day upon which the offence is committed or continues” in the fourth, fifth and sixth lines.

18.—(1) Subsection 16 (1) of the said Act is amended by striking out “and on conviction is liable on first conviction to a fine of not more than \$5,000 and on each subsequent conviction to a fine of not more than \$10,000 or to imprisonment for a term of not more than one year, or to both such fine and imprisonment” in the eighth, ninth, tenth, eleventh and twelfth lines.

(2) Subsection 16 (2) of the said Act is repealed.

(3) Subsection 16 (4) of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$5,000” in the third and fourth lines.

19. Subsections 17 (2) and (3) of the said Act are repealed.

20. Subsection 18 (2) of the said Act is repealed.

21. Subsection 19 (2) of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both” in the twelfth, thirteenth and fourteenth lines.

22. Subsection 20 (8) of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$200 for every day the contravention continues” in the seventh and eighth lines.

23. Section 22q of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 50, section 1, is repealed.

24.—(1) Subsection 23 (2) of the said Act is repealed.

(2) Subsection 23 (5) of the said Act is repealed and the following substituted therefor:

Offence

(5) Every municipality or person that,

- (a) fails to comply with any direction or order given or made by a Director under subsection (3); or
- (b) contravenes any of the terms and conditions of the approval granted by a Director under subsection (4),

is guilty of an offence.

(3) Subsection 23 (6) of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$100” in the sixth and seventh lines.

(4) Subsection 23 (8) of the said Act is repealed and the following substituted therefor:

Offence

(8) Every municipality or person that fails to comply with any direction given by a Director under subsection (7) is guilty of an offence.

25.—(1) Subsection 24 (2) of the said Act is repealed.

(2) Subsection 24 (5) of the said Act is repealed and the following substituted therefor:

(5) Every municipality or person that,

Offence

- (a) fails to comply with any direction or order given or made by a Director under subsection (3); or**
- (b) contravenes any of the terms and conditions of the approval granted by a Director under subsection (4),**

is guilty of an offence.

26. Section 31 of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$100” in the sixth and seventh lines.

27. Subsection 32 (2) of the said Act is repealed and the following substituted therefor:

(2) Every municipality or person that fails to comply with any direction given by a Director under subsection (1) is guilty of an offence.

Offence

28. Subsection 33 (2) of the said Act is amended by striking out “and on conviction is liable to a fine of \$500 for every day upon which such default continues after receipt of the report” in the fourth, fifth and sixth lines.

29. Subsection 43 (12) of the said Act is repealed.

30.—(1) Subsection 44 (2) of the said Act is amended by striking out “Minister of Consumer and Commercial Relations” in the second line and inserting in lieu thereof “Minister of Housing or such other member of the Executive Council to whom the administration of sections 45, 46, 47 and 48 may be assigned”.

(2) Subsection 44 (4) of the said Act is amended by striking out “this section” in the second line and inserting in lieu thereof “subsection (2)”.

31. Section 50 of the said Act is repealed.

32. Subsection 51 (3) of the said Act is repealed.

33. Subsection 52 (2) of the said Act is repealed.

34. Section 56 of the said Act is amended by adding thereto the following subsection:

Power to
restrain by
order upon
conviction

(2) Upon application by counsel or agent for the Minister, the court that convicts a municipality or person of an offence under this Act, in addition to any other remedy and to any other penalty imposed by law, may make an order prohibiting the continuation or repetition by the municipality or person of the act or omission for which the municipality or person is convicted.

35. Section 59 of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$500” in the fifth and sixth lines.

36. The said Act is amended by adding thereto the following sections:

Offence,
general

66.—(1) Every municipality or person that contravenes this Act or the regulations is guilty of an offence.

Offence
re order,
notice,
direction

(2) Every municipality or person that fails to comply with an order, notice, direction, requirement or report made under this Act is guilty of an offence.

Offence
re licence,
permit,
approval

(3) Every municipality or person that contravenes a term or condition of a licence, permit, approval or report made under this Act is guilty of an offence.

Application
to
subss. 44 (4),
46 (3)

(4) Subsections (1) to (3) do not apply in respect of subsection 44 (4) or 46 (3).

Penalty

67.—(1) Every person that is guilty of an offence under this Act is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$5,000 on a first conviction and not more than \$10,000 on each subsequent conviction.

Idem,
municipality
or
corporation

(2) Where a municipality or other corporation is convicted of an offence under this Act, the maximum fine that may be imposed for each day or part of a day on which the offence occurs or continues is \$10,000 on a first conviction and \$20,000 on each subsequent conviction and not as provided in subsection (1).

Subsequent
conviction

(3) For the purposes of determining the penalty to which a person or a municipality is liable under subsection (1) or (2), a conviction of the person or municipality for an offence under section 66 is a subsequent conviction if the person or municipality has previously been convicted of an offence under this

Act, the *Environmental Protection Act* or the *Pesticides Act* or the regulations made under any of them for which the person or municipality was liable on conviction to a fine of \$5,000 or more.

R.S.O. 1980,
cc. 141, 376

(4) Subsections (1) to (3) do not apply in respect of subsection 44 (4) or 46 (3).

Application
to
subss. 44 (4),
46 (3)

68.—(1) Every person convicted under section 67 for an offence under subsection 16 (1) or clause 19 (2) (b) is liable, in addition to or in substitution for the penalties set out in section 67, to imprisonment for a term of not more than one year.

Offences
re actual
pollution

(2) Where a municipality or other corporation is convicted of an offence under a subsection mentioned in subsection (1), the maximum fine that may be imposed for each day or part of a day on which the offence occurs or continues is \$25,000 on a first conviction and \$50,000 on each subsequent conviction and not as provided in section 67.

Idem,
municipality
or other
corporation

(3) Subsection (1) does not apply unless the court is satisfied that the person was notified, before entering his or her plea, that a penalty would be sought under subsection (1).

Notice

(4) For the purposes of determining the penalty to which a municipality or other corporation is liable under subsection (2), a conviction of the municipality or other corporation for an offence mentioned in subsection (1) is a subsequent conviction if the municipality or other corporation has previously been convicted of an offence under this Act, the *Environmental Protection Act* or the *Pesticides Act* or the regulations made under any of them for which the municipality or other corporation was liable on conviction to a fine of \$25,000 or more.

Subsequent
conviction

R.S.O. 1980,
cc. 141, 376

69. The court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may increase a fine imposed upon the person by an amount equal to the amount of the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence, notwithstanding any maximum fine elsewhere provided.

Penalty re
monetary
benefit

70.—(1) Upon application by counsel or agent for the Minister, the court that convicts a municipality or person of an offence under this Act, in addition to any other penalty imposed by the court, may order the municipality or person to take all or part of the action applied for to prevent, decrease or eliminate the effects on the environment of the offence and

Order to
protect and
restore
environment

to restore the environment within the period or periods of time specified in the order.

Other
conditions

(2) An order under subsection (1) may contain such other conditions relating to the circumstances of the offence and of the municipality or person that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to rehabilitation.

Variation
of order

(3) The court that made an order under subsection (1) may, at any time upon the application of counsel or agent for the Minister or upon the application of the municipality or person convicted or counsel or agent for the municipality or person convicted, with notice to the other party, after a hearing or, with the consent of the parties, without a hearing, make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances.

Conflict

(4) Nothing in subsection (1) authorizes the making of an order that conflicts with an order, notice, direction or requirement or prevents the implementation of a report previously made under this Act by the Minister or a Director, but an order may be made under subsection (1) supplementing the provisions of an order in respect of the prevention, decrease or elimination of harm to the environment and the restoration of the environment.

Time
period

(5) The court that makes an order under subsection (1) shall specify in the order the period for which it is to remain in force, which shall not be for more than one year from the date when the order takes effect.

Continuation
in force

(6) Where a person bound by an order under subsection (1) is imprisoned, the order continues in force except in so far as the imprisonment renders it impossible for the person to comply for the time being with the order.

Suspension
for default
in payment
of fine
R.S.O. 1980,
cc. 141, 376,
400

71.—(1) Where a person is in default of payment of a fine imposed upon conviction for an offence against this Act, the *Environmental Protection Act*, the *Pesticides Act* or the regulations made under any of them, on the application of the Director, an order may be made under subsection 70 (2) of the *Provincial Offences Act* directing that,

- (a) one or more of the person's licences be suspended;
and
- (b) no licence be issued to the person,

until the fine is paid.

(2) The Director shall,

Duty of
Director

- (a) on being informed of an outstanding order referred to in subsection (1), suspend the person's licence, if it is not already suspended under another order referred to in subsection (1); and
- (b) on being informed that the fine and any applicable prescribed administrative fee for the reinstatement of the licence are paid, reinstate the licence, unless the Director has been informed that,
 - (i) there is another outstanding order referred to in subsection (1) directing that the licence be suspended, or
 - (ii) the licence is suspended under any other order or under another statute.

(3) The Lieutenant Governor in Council may make regulations prescribing forms and procedures and respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this section.

Regulations

(4) In this section, "licence" means a licence or permit under this Act or the regulations.

Definition

72. For the purposes of this Act and the regulations, an act or thing done or omitted to be done by an officer, official, employee or agent of a municipality or other corporation in the course of his or her employment or in the exercise of his or her powers or the performance of his or her duties shall be deemed to be also an act or thing done or omitted to be done by the municipality or other corporation.

Act of
officer, etc.

73.—(1) In this section, "official document" means,

Definition

- (a) an approval, certificate, consent, licence, notice, permit, order or return under this Act or the regulations;
- (b) a certificate as to service of a document mentioned in clause (a);
- (c) a certificate or report as to the analysis, description, ingredients, quality, quantity or temperature of any solid, liquid or gas or any combination of any of them;

- (d) a certificate or report as to the analysis, description, quality or quantity of any odour, heat, sound, vibration, radiation or any combination of any of them;
- (e) a certificate or report as to the custody of any solid, liquid or gas or any combination of any of them;
- (f) a certificate as to the custody of any book, record or report or as to the custody of any other document; or
- (g) a certificate as to whether or not any document or notification was received or issued by the Minister or the Ministry under this Act or the regulations.

Official
documents
as evidence

(2) An official document, other than an official document mentioned in clause (1) (c) or (d), that purports to be signed by the Minister or an employee in the Ministry shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

Idem

(3) An official document mentioned in clause (1) (c), (d) or (e) that purports to be signed by an analyst shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

PART III

Pesticides Act

37. Subsection 1 (1) of the *Pesticides Act*, being chapter 376 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clauses:

R.S.O. 1980,
c. 141

(aa) "analyst" means an analyst appointed under the *Environmental Protection Act*;

(ca) "document" includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device.

38. Section 8 of the said Act is repealed and the following substituted therefor:

8. For the purposes of this Act and the regulations, an act or thing done or omitted to be done by an officer, official, employee or agent of a corporation in the course of his or her employment or in the exercise of his or her powers or the performance of his or her duties shall be deemed to be also an act or thing done or omitted to be done by the corporation.

Act of
officer, etc.

39. Section 34 of the said Act is repealed and the following substituted therefor:

34.—(1) Every person who contravenes this Act or a regulation is guilty of an offence.

Offence

(2) Every person who fails to comply with an order under this Act is guilty of an offence.

Offence,
orders

(3) Every person who fails to comply with a term or condition of a licence or permit made or issued under this Act is guilty of an offence.

Offence,
licence
or permit

40. Section 34a of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 51, section 1, is renumbered as section 34f.

41. The said Act is amended by adding thereto the following sections:

34a.—(1) Every person who is guilty of an offence under this Act is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$5,000 on a first conviction and not more than \$10,000 on each subsequent conviction.

Penalty

(2) Where a corporation is convicted of an offence under this Act, the maximum fine that may be imposed for each day or part of a day on which the offence occurs or continues is \$10,000 on a first conviction and \$20,000 on each subsequent conviction and not as provided in subsection (1).

Offence,
corporation

(3) For the purposes of determining the penalty to which a person is liable under subsection (1) or (2), a conviction of the person for an offence under this Act is a subsequent conviction if the person has previously been convicted of an offence under this Act, the *Environmental Protection Act* or the *Ontario Water Resources Act* or the regulations made under any of them for which the person was liable on conviction to a fine of \$5,000 or more.

Subsequent
conviction

R.S.O. 1980,
cc. 141, 361

34b. The court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the

Penalty re
monetary
benefit

court, may increase a fine imposed upon the person by an amount equal to the amount of the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence, notwithstanding any maximum fine elsewhere provided.

Offence re
actual
pollution

34c.—(1) Every person convicted under this Act for the contravention of section 4 or of a stop order made under section 20 is liable, in addition to or in substitution for the penalties set out in section 34a, to imprisonment for a term of not more than one year.

Idem,
corporation

(2) Where a corporation is convicted of an offence under a section mentioned in subsection (1), the maximum fine that may be imposed for each day or part of a day on which the offence occurs or continues is \$25,000 on a first conviction and \$50,000 on each subsequent conviction and not as provided in section 34a.

Notice

(3) Subsection (1) does not apply unless the court is satisfied that the person was notified, before entering his or her plea, that a penalty would be sought under subsection (1).

Subsequent
conviction

(4) For the purposes of determining the penalty to which a corporation is liable under subsection (2), a conviction of the corporation for an offence mentioned in subsection (1) is a subsequent conviction if the corporation has previously been convicted of an offence under this Act, the *Environmental Protection Act* or the *Ontario Water Resources Act* or the regulations made under any of them for which the corporation was liable on conviction to a fine of \$25,000 or more.

R.S.O. 1980,
cc. 141, 361

Order re
damage

34d.—(1) Upon application by counsel or agent for the Minister, the court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may order the person to take all or part of the action applied for to prevent, decrease or eliminate the effects on the environment of the offence and to restore the environment within the period or periods of time specified in the order.

Other
conditions

(2) An order under subsection (1) may contain such other conditions relating to the circumstances of the offence and of the person that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to rehabilitation.

Variation
of order

(3) The court that made an order under subsection (1) may, at any time upon the application of counsel or agent for the Minister or upon the application of the person convicted or counsel or agent for the person convicted, with notice to the

other party, after a hearing or, with the consent of the parties, without a hearing, make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances.

(4) Nothing in subsection (1) authorizes the making of an order that conflicts with an order previously made under this Act by the Minister or the Director, but an order may be made under subsection (1) supplementing the provisions of an order in respect of the prevention, decrease or elimination of harm to the environment and the restoration of the environment. Conflict

(5) The court that makes an order under subsection (1) shall specify in the order the period for which it is to remain in force, which shall not be for more than one year from the date when the order takes effect. Time period

(6) Where a person bound by an order under subsection (1) is imprisoned, the order continues in force except in so far as the imprisonment renders it impossible for the person to comply for the time being with the order. Continuation in force

34e.—(1) Where a person is in default of payment of a fine imposed upon conviction for an offence against this Act, the *Environmental Protection Act*, the *Ontario Water Resources Act* or the regulations made under any of them, on the application of the Director, an order may be made under subsection 70 (2) of the *Provincial Offences Act* directing that, Suspension for default in payment of fine
R.S.O. 1980, cc. 141, 361, 400

- (a) one or more of the person’s licences be suspended; and
- (b) no licence be issued to the person,

until the fine is paid.

(2) The Director shall, Duty of Director

- (a) on being informed of an outstanding order referred to in subsection (1), suspend the person’s licence, if it is not already suspended under another order referred to in subsection (1); and
- (b) on being informed that the fine and any applicable prescribed administrative fee for the reinstatement of the licence are paid, reinstate the licence, unless the Director has been informed that,

- (i) there is another outstanding order referred to in subsection (1) directing that the licence be suspended, or
- (ii) the licence is suspended under any other order or under another statute.

Regulations

(3) The Lieutenant Governor in Council may make regulations prescribing forms and procedures and respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this section.

Definition

(4) In this section, “licence” means a licence or permit under this Act or the regulations.

42. Section 36 of the said Act is repealed and the following substituted therefor:

Definition

36.—(1) In this section, “official document” means,

- (a) an approval, certificate, consent, licence, notice, permit, order or return under this Act or the regulations;
- (b) a certificate as to service of a document mentioned in clause (a);
- (c) a certificate or report as to the analysis, description, ingredients, quality, quantity or temperature of any solid, liquid or gas or any combination of any of them;
- (d) a certificate or report as to the analysis, description, quality or quantity of any odour, heat, sound, vibration, radiation or any combination of any of them;
- (e) a certificate or report as to the custody of any solid, liquid or gas or any combination of any of them;
- (f) a certificate as to the custody of any book, record or report or as to the custody of any other document; or
- (g) a certificate as to whether or not any document or notification was received or issued by the Minister or the Ministry under this Act or the regulations.

Official documents as evidence

(2) An official document, other than an official document mentioned in clause (1) (c) or (d), that purports to be signed by the Minister or an employee in the Ministry shall be

received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

(3) An official document mentioned in clause (1) (c), (d) or (e) that purports to be signed by an analyst shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document. Idem

43. Section 37 of the said Act is amended by adding thereto the following subsection:

(3) Upon application by counsel or agent for the Minister, the court that convicts a person of an offence under this Act, in addition to any other remedy and to any other penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the act or omission for which the person is convicted. Power to
restrain by
order upon
conviction

**44. This Act comes into force on the day it receives Royal Assent. Commence-
ment**

45. The short title of this Act is the *Environment Enforcement Statute Law Amendment Act, 1986*. Short title

Bill 112

An Act respecting the Enforcement of Statutes related to the Environment

The Hon. J. Bradley
Minister of the Environment

<i>1st Reading</i>	July 3rd, 1986
<i>2nd Reading</i>	December 16th, 1986
<i>3rd Reading</i>	
<i>Royal Assent</i>	



(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The Bill restructures the enforcement provisions of the *Environmental Protection Act*, the *Ontario Water Resources Act* and the *Pesticides Act*.

Part I relates to the *Environmental Protection Act*.

SECTION 1.—Subsection 1. The term “adverse effects” is defined. The term is used in new Part X-A—Financial Assurance and in Part IX—Spills. The term “analyst” is defined. The term is used in sections 4 and 135 of the Act, both re-enacted in this Bill. The term “document” is added and takes into account modern methods of information storage. The meaning of “municipality”, as it is used in the definition of “person”, is clarified.

Subsection 2. Subsection 1 (3) is added to the Act to clarify the application of penalty provisions to municipalities.

SECTION 2. Section 4 of the Act authorizes the appointment of Directors for the purposes of the Act and the regulations. The section is re-enacted to widen the power of appointment to include the members of classes of persons and to provide for the appointment of analysts and the designation of provincial officers.

SECTION 3. Section 6 of the Act authorizes the Director to issue a control order following upon a report of a provincial officer containing certain findings. The effect of the amendment is to make it clear that the report of the provincial officer must first be served on the person responsible for the source of the contaminant and not merely filed with the Minister.

SECTION 4. Section 47 of the Act is the offence section for Part V—Waste Management. The repeal of the section makes section 146 of the Act apply to the Part.

SECTION 5. Section 78 of the Act is the offence section for Part VIII—Litter. The section is re-enacted to separate offences and penalties related to litter from those related to packaging and containers, to increase the maximum fines and to provide for higher maximum fines for convicted corporations.

SECTION 6. The definition of “adverse effects” is removed from Part IX—Spills. The term is now defined in section 1 of the Act.

SECTION 7. Part X-A—Financial Assurance is added to the Act.

SECTION 8. Section 125 provides for the designation of provincial officers; it is repealed and that authority is now found in section 4 of the Act (see the note to section 2 of the Bill).

SECTION 9. Subsection 126 (2) is repealed to remove the concept of filing provincial officer’s reports.

SECTION 10. Section 135 of the Act provides for the admission of documents as evidence in proceedings. The section is re-enacted to widen the range of documents (now termed “official documents”).

SECTION 11. Section 136 of the Act relates to the making of regulations. New subsection (9) provides for regulations related to Part X-A—Financial Assurance.

SECTION 12. Section 141 of the Act relates to certificates of analysis as evidence in proceedings. The repeal is complementary to the re-enactment of section 135.

SECTION 13. New subsection 144 (2) of the Act enables a court that convicts a person of an offence under the Act to make an order, upon its own initiative or upon appli-

cation by counsel for the prosecutor, prohibiting the continuation or repetition of the offence by the person convicted.

SECTION 14. Section 146 of the Act is the general offence and penalty section. The section is amended to increase the maximum fines in the case of a corporation.

SECTION 15. New section 146a of the Act provides more serious penalties for offences against sections of the Act related to actual polluting. The penalties are more serious than the penalties in section 146, the general penalty section of the Act. New section 146a provides for the option of imprisonment for not more than one year and for greater fines.

New section 146b defines what is meant by “subsequent conviction” for which a greater penalty may be imposed.

New section 146c enables a court to increase a fine by an amount equal to the monetary benefit obtained by the commission of the offence.

New section 146d enables a court that convicts a person of an offence under any other section of the Act to make an order, upon its own initiative or upon application by counsel for the prosecutor, requiring the person to take the action specified in the order to prevent, eliminate and reduce the effects of the offence on the natural environment and to restore the natural environment.

New section 146e of the Act provides that on the application of the Director an order may be made under the *Provincial Offences Act* suspending any licence held under the Act by a person who is in default of payment of a fine imposed for a contravention of this Act, the *Ontario Water Resources Act* or the *Pesticides Act*.

New section 146f of the Act deems an act or thing done in the course of employment by an officer, official, employee or agent of a corporation to be the act or thing done or omitted by the corporation or other employer.

SECTION 16. Section 147 of the Act provides specific penalties where a person is convicted of an offence in respect of hauled liquid industrial waste or hazardous waste. The section is amended to extend the optional penalty of imprisonment (now applicable only in cases under subsection 16 (1) of the *Ontario Water Resources Act*) to cases under the *Environmental Protection Act* or the regulations under that Act, to increase the penalties for actual polluting and to differentiate between individuals and corporations.

SECTION 17. New section 147a of the Act imposes a duty on directors and officers of corporations that engage in activities that may result in pollution. The duty is to take all reasonable care to prevent the corporation from causing or permitting the pollution. Failure to carry out the duty is an offence whether or not the corporation is prosecuted or convicted.

Part II relates to the *Ontario Water Resources Act*.

SECTION 18. The terms “analyst” and “document” are defined.

SECTION 19. The *Ontario Water Resources Act* will apply to the Crown as of the 31st day of March, 1987.

SECTION 20. Subsection 2 (2) of the Act assigns ministerial responsibility for sections 45 to 48 of the Act. These sections relate to plumbing.

SECTIONS 21 to 28. The amendments and repeals are complementary to the new enforcement provisions of subsection 56 (2) and sections 66 to 73 of the Act, as set out in this Bill.

SECTION 29.—Subsections 1 and 3. The changes are complementary to the new enforcement provisions.

Subsections 2 and 4. Subsections 23 (5) and (8) of the Act are re-enacted to remove the exemption of municipalities and to complement the new enforcement provisions.

SECTION 30.—Subsection 1. The repeal is complementary to the new enforcement provisions.

Subsection 2. Subsection 24 (5) of the Act is re-enacted to remove the exemption of municipalities and to complement the new enforcement provisions.

Subsection 3. Subsection 24 (7) is a transitional provision for sewage works constructed, extended or altered by the Crown.

SECTION 31. The amendment is complementary to the new enforcement provisions.

SECTION 32. Subsection 32 (2) of the Act is re-enacted to remove the exemption of municipalities and to complement the new enforcement provisions.

SECTIONS 33 and 34. The amendment and the repeal are complementary to the new enforcement provisions.

SECTION 35.—Subsection 1. Subsection 44 (1) of the Act relates to the making of regulations. New clause (u) authorizes exemptions for classes of materials used for a purpose that is a benefit to the public.

Subsection 2. Subsection 44 (2) of the Act relates to the making of regulations related to plumbing. The amendment is complementary to the re-enactment of subsection 2 (2) of the Act, set out in this Bill.

Subsection 3. The amendment retains the existing fines for offences related to plumbing.

SECTIONS 36 to 38. The amendment and the repeals are complementary to the new enforcement provisions.

SECTION 39. New subsection 56 (2) of the Act enables the court that convicts a person to make an order prohibiting the continuation or repetition of the act or omission for which the person is convicted. The subsection is similar to existing subsection 56 (1) of the Act, but does not require the commencement of a separate proceeding.

SECTION 40. Section 59 of the Act makes the giving of false information on an application or return an offence; the amendment is complementary to the new enforcement provisions.

SECTION 41. New section 66 of the Act is the new general offence section.

New section 67 of the Act sets out the basic penalties related to individuals, corporations and directors and officers of corporations.

New section 68 of the Act sets out penalties related to actual pollution. The section provides for imprisonment for not more than one year for individuals and higher fines for corporations.

New section 69 defines the meaning of “subsequent conviction”.

New section 70 of the Act enables the court to increase a fine by an amount equal to the monetary benefit obtained by the commission of the offence.

New section 71 of the Act enables the court, upon its own initiative or upon application by counsel for the prosecutor, to order a convicted person to take specified action to protect and to restore the natural environment.

New section 72 of the Act deals with the suspension of a licence; see the note to section 11 of the Bill relating to new section 146e of the *Environmental Protection Act*.

New section 73 of the Act specifies that an action by an officer, employee or agent of a municipality, a corporation or other employer in the course of employment is deemed to be the action of the municipality, corporation or other employer for the purposes of the Act and the regulations.

New section 74 of the Act relates to the use of official documents as evidence in proceedings.

SECTION 42. New section 75 of the Act imposes a duty on directors and officers of corporations similar to that in new section 147a of the *Environmental Protection Act*. Failure to carry out the duty is an offence whether or not the corporation is prosecuted or convicted.

Part III relates to the *Pesticides Act*.

SECTION 43. The terms “analyst” and “document” are defined.

SECTION 44. Section 8 of the Act, which relates to the liability of an employer, is re-enacted to be consistent with similar sections set out in this Bill for the *Environmental Protection Act* (section 146f) and the *Ontario Water Resources Act* (section 73).

SECTION 45. Section 34, the general offence and penalty section of the Act, is replaced with a new basic offence section.

SECTION 46. Section 34a of the Act is now renumbered as section 34f.

SECTION 47. New sections 34a to 34e are added to the Act.

New section 34a is the basic penalty section. The maximum penalties for an individual are unchanged at \$5,000 per day on a first conviction and \$10,000 per day on each subsequent conviction. The maximum penalties per day for a corporation will be \$25,000 and \$50,000.

New section 34b enables the court to increase a fine by an amount equal to the monetary benefit obtained by the commission of the offence.

New section 34c provides an additional penalty of imprisonment for not more than one year for contravention of section 4 of the Act (actual pollution) or of a stop order. For a corporation, the fines are increased to a minimum of \$2,000 and a maximum of \$50,000 per day on a first conviction and a minimum of \$4,000 and a maximum of \$100,000 per day on a subsequent conviction for actual pollution or contravention of a stop order.

New section 34d authorizes the court, upon its own initiative or upon application by counsel for the prosecutor, to order a person convicted of an offence under the Act to take the action specified by the court to protect and restore the natural environment.

New section 34e deals with the suspension of a licence; see the note to section 15 of the Bill relating to new section 146e of the *Environmental Protection Act*.

SECTION 48. New section 34g of the Act imposes a duty on directors and officers of corporations similar to that set out in new section 147a of the *Environmental Protection*

SECTION 29.—Subsections 1 and 3. The changes are complementary to the new enforcement provisions.

Subsections 2 and 4. Subsections 23 (5) and (8) of the Act are re-enacted to remove the exemption of municipalities and to complement the new enforcement provisions.

SECTION 30.—Subsection 1. The repeal is complementary to the new enforcement provisions.

Subsection 2. Subsection 24 (5) of the Act is re-enacted to remove the exemption of municipalities and to complement the new enforcement provisions.

Subsection 3. Subsection 24 (7) is a transitional provision for sewage works constructed, extended or altered by the Crown.

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Subsection 3. The amendment retains the existing fines for offences related to plumbing.

SECTIONS 36 to 38. The amendment and the repeals are complementary to the new enforcement provisions.

SECTION 39. New subsection 56 (2) of the Act enables the court that convicts a person to make an order prohibiting the continuation or repetition of the act or omission for which the person is convicted. The subsection is similar to existing subsection 56 (1) of the Act, but does not require the commencement of a separate proceeding.

SECTION 40. Section 59 of the Act makes the giving of false information on an application or return an offence; the amendment is complementary to the new enforcement provisions.

SECTION 41. New section 66 of the Act is the new general offence section.

New section 67 of the Act sets out the basic penalties related to individuals, corporations and directors and officers of corporations.

New section 68 of the Act sets out penalties related to actual pollution. The section provides for imprisonment for not more than one year for individuals and higher fines for corporations.

New section 69 defines the meaning of “subsequent conviction”.

New section 70 of the Act enables the court to increase a fine by an amount equal to the monetary benefit obtained by the commission of the offence.

New section 71 of the Act enables the court, upon its own initiative or upon application by counsel for the prosecutor, to order a convicted person to take specified action to protect and to restore the natural environment.

New section 72 of the Act deals with the suspension of a licence; see the note to section 11 of the Bill relating to new section 146e of the *Environmental Protection Act*.

New section 73 of the Act specifies that an action by an officer, employee or agent of a municipality, a corporation or other employer in the course of employment is deemed to be the action of the municipality, corporation or other employer for the purposes of the Act and the regulations.

New section 74 of the Act relates to the use of official documents as evidence in proceedings.

SECTION 42. New section 75 of the Act imposes a duty on directors and officers of corporations similar to that in new section 147a of the *Environmental Protection Act*. Failure to carry out the duty is an offence whether or not the corporation is prosecuted or convicted.

Part III relates to the *Pesticides Act*.

SECTION 43. The terms “analyst” and “document” are defined.

SECTION 44. Section 8 of the Act, which relates to the liability of an employer, is re-enacted to be consistent with similar sections set out in this Bill for the *Environmental Protection Act* (section 146f) and the *Ontario Water Resources Act* (section 73).

SECTION 45. Section 34, the general offence and penalty section of the Act, is replaced with a new basic offence section.

SECTION 46. Section 34a of the Act is now renumbered as section 34f.

SECTION 47. New sections 34a to 34e are added to the Act.

New section 34a is the basic penalty section. The maximum penalties for an individual are unchanged at \$5,000 per day on a first conviction and \$10,000 per day on each subsequent conviction. The maximum penalties per day for a corporation will be \$25,000 and \$50,000.

New section 34b enables the court to increase a fine by an amount equal to the monetary benefit obtained by the commission of the offence.

New section 34c provides an additional penalty of imprisonment for not more than one year for contravention of section 4 of the Act (actual pollution) or of a stop order. For a corporation, the fines are increased to a minimum of \$2,000 and a maximum of \$50,000 per day on a first conviction and a minimum of \$4,000 and a maximum of \$100,000 per day on a subsequent conviction for actual pollution or contravention of a stop order.

New section 34d authorizes the court, upon its own initiative or upon application by counsel for the prosecutor, to order a person convicted of an offence under the Act to take the action specified by the court to protect and restore the natural environment.

New section 34e deals with the suspension of a licence; see the note to section 15 of the Bill relating to new section 146e of the *Environmental Protection Act*.

SECTION 48. New section 34g of the Act imposes a duty on directors and officers of corporations similar to that set out in new section 147a of the *Environmental Protection*

Act and in new section 75 of the *Ontario Water Resources Act*. Failure to carry out the duty is an offence whether or not the corporation is prosecuted or convicted. 

SECTION 49. Section 36 of the Act is replaced with a more detailed section related to documentary proof.

SECTION 50. New subsection 37 (3) of the Act is similar to new subsection 144 (2) of the *Environmental Protection Act*, set out in this Bill, and new subsection 56 (2) of the *Ontario Water Resources Act*, set out in this Bill.

Bill 112

1986

**An Act respecting the Enforcement of
Statutes related to the Environment**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

Environmental Protection Act



1.—(1) Subsection 1 (1) of the *Environmental Protection Act*, being chapter 141 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 52, section 1, is further amended,

- (a) by relettering clause (a) as (aa);
- (b) by adding thereto the following clauses:
 - (a) “adverse effects” means one or more of,
 - (i) impairment of the quality of the natural environment for any use that can be made of it,
 - (ii) injury or damage to property or to plant or animal life,
 - (iii) harm or material discomfort to any person,
 - (iv) an adverse effect on the health of any person,
 - (v) impairment of the safety of any person,
 - (vi) rendering any property or plant or animal life unfit for use by man,
 - (vii) loss of enjoyment of normal use of property,
and

(viii) interference with the normal conduct of business;


(ab) "analyst" means an analyst appointed under this Act;

(cb) "document" includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device.

(c) in clause (1), by inserting after "municipality" in the first line "as defined in this subsection".

(2) Section 1 of the said Act is amended by adding thereto the following subsection:

Idem,
penalties

(3) A municipality that is convicted of an offence under this Act is liable to the penalty provided for a corporation convicted of the offence. 

2. Section 4 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 3, is repealed and the following substituted therefor:

Directors

4.—(1) The Minister may appoint in writing as Directors,

- (a) such employees of the Ministry;
- (b) the members of such classes of employees of the Ministry; and
- (c) subject to the approval of the Lieutenant Governor in Council, such other persons or the members of such other classes of persons,

or any of them, as the Minister considers necessary in respect of such sections of this Act and in respect of such of the regulations or sections of the regulations as are set out in the appointments.

Analysts

(2) The Minister may in writing appoint as analysts or designate as provincial officers,

- (a) such employees of the Ministry;

- (b) the members of such classes of employees of the Ministry;
- (c) such other persons; and
- (d) the members of such classes of other persons,

or any of them, as the Minister considers necessary in respect of such sections of any Act administered by the Minister and in respect of such of the regulations or sections of the regulations under such Act as are set out in the appointments or designations.

(3) The Minister, in an appointment or designation under subsection (1) or (2), may limit the authority of a Director, analyst or provincial officer in such manner as the Minister considers necessary or advisable.

Limitation
of authority

3. Section 6 of the said Act is amended by striking out “filed as provided by section 126” in the first and second lines and inserting in lieu thereof “a copy of which has been served upon the person responsible for a source of contaminant”.

4. Section 47 of the said Act is repealed.

5. Section 78 of the said Act is repealed and the following substituted therefor:

78.—(1) Every person who fails to comply with a provision of this Part or a provision of a regulation relating to this Part that relates to litter is guilty of an offence and is liable on conviction to a fine of not more than \$500 on a first conviction and not more than \$1,000 on each subsequent conviction.

Offence

(2) Where a corporation is convicted of an offence under subsection (1), the maximum fine that may be imposed is \$1,000 on a first conviction and \$2,000 on each subsequent conviction and not as provided in subsection (1).

Idem,
corporation

78a.—(1) Every person who fails to comply with a provision of this Part or a provision of a regulation relating to this Part that relates to packaging or containers rather than to litter is guilty of an offence and is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$1,000 on a first conviction and not more than \$2,000 on each subsequent conviction.

Offence

(2) Where a corporation is convicted of an offence under subsection (1), the maximum fine that may be imposed for each day or part of a day on which the offence occurs or con-

Idem,
corporation

tinues is \$3,000 on a first conviction and \$6,000 on each subsequent conviction and not as provided in subsection (1).

6. Clause 79 (1) (a) of the said Act is repealed.

7. The said Act is amended by adding thereto the following Part:

PART X-A

FINANCIAL ASSURANCE

Definitions

119a. In this Part,

R.S.O. 1980,
c. 361

“approval” means program approval, certificate of approval or provisional certificate of approval, and includes a permit or approval issued by a Director under the *Ontario Water Resources Act*, but does not include an approval under Part IX of this Act;

1980-81,
c. 40 (Can.)

“bank” means a bank named in Schedule A or Schedule B to the *Bank Act* (Canada);

“environmental measures” means one or more of the measures set out in clauses 119b (1) (a) to (c);

“financial assurance” means one or more of,

- (a) cash, in the amount specified in the approval or order,
- (b) a letter of credit from a bank, in the amount and terms specified in the approval or order,
- (c) negotiable securities issued or guaranteed by the Government of Ontario or the Government of Canada in the amount specified in the approval or order,
- (d) a personal bond accompanied by collateral security, each in the form, terms and amount specified in the approval or order,
- (e) a bond of a guarantee company approved under the *Guarantee Companies Securities Act*, in the form, terms and amount specified in the approval or order,
- (f) a bond of a guarantor, other than a guarantee company, accompanied by collateral security, each in

R.S.O. 1980,
c. 192

the form, terms and amount specified in the approval or order,

- (g) an agreement, in the form and terms specified in the approval or order, and
- (h) an agreement, in the form and terms prescribed by the regulations;

“order” means an order by the Director under this Act, and includes an order, notice, direction, requirement or report made by a Director under the *Ontario Water Resources Act*, but does not include an order under section 119c (order for performance of environmental measures) of this Act;

R.S.O. 1980.
c. 361

“works” means an activity, facility, thing, undertaking or site in respect of which an approval or order is issued.

119b.—(1) The Director may include in an approval or order in respect of a works a requirement that the person to whom the approval is issued or the order is directed provide financial assurance to the Crown in right of Ontario for any one or more of,

Financial
assurance for
compliance
with approval
or order

- (a) the performance of any action specified in the approval or order;
- (b) the provision of alternate water supplies to replace those that the Director has reasonable and probable grounds to believe are or are likely to be contaminated or otherwise interfered with by the works to which the approval or order is related; and
- (c) measures appropriate to prevent adverse effects upon and following the cessation or closing of the works.

(2) A requirement under subsection (1) may provide that the financial assurance may be provided, reduced or released in stages specified in the approval or order.

Changes in
amount of
financial
assurance

(3) The Director may amend an approval or order to change a requirement as to financial assurance contained in the approval or order.

Amendment
of approval
or order

119c.—(1) Failure to provide financial assurance specified in an approval or in accordance with a stage specified in an approval is grounds for revocation of the approval and for an order in writing by the Director prohibiting or restricting the

Failure to
provide
financial
assurance

carrying on, operation or use of the works in respect of which the financial assurance is required.

Idem,
order

(2) Failure to provide financial assurance specified in an order or in accordance with a stage specified in an order is grounds for an order in writing by the Director prohibiting or restricting the carrying on, operation or use of the works in respect of which the financial assurance is required.

Return or
release of
financial
assurance

119d.—(1) Upon request, part or all of the financial assurance given in respect of a works may be returned or released pursuant to an order in writing by the Director.

Grounds for
order

(2) The Director may make an order mentioned in subsection (1) if satisfied that the financial assurance returned or released is not required in respect of the works.

Continuation of
financial
assurance

119e. The Director may convert a financial assurance to cash to be held by the Crown to the same purposes as the financial assurance or otherwise realize the financial assurance unless the financial assurance is renewed at least thirty days before it would otherwise expire.

Order for
use of
financial
assurance

119f.—(1) In the circumstances set out in subsection (2), the Director by order may require the performance of environmental measures for which the Crown holds financial assurance and may require the use of the financial assurance for the performance of the environmental measures.

Basis for
order

(2) The Director may make an order mentioned in subsection (1) if the Director has reasonable and probable ground to believe that any environmental measure required by the approval or order in respect of which the financial assurance was given has not been or will not be carried out in accordance with the requirement.

Parties
affected


(3) An order under this section shall be directed to the person to whom the approval or order under section 119b (financial assurance) was issued or directed and to any person that to the knowledge of the Director has provided the financial assurance for or on behalf of the person to whom the approval or order was issued, or shall be directed to the successor or assignee of any such person.

Performance

(4) Upon the issuance of an order by the Director under subsection (1), the Crown may,

(a) use any cash;

- (b) realize any bond or other form of security, and use the money derived therefrom; and
- (c) enforce any agreement,

provided or obtained as the financial assurance for the performance of the environmental measures and may carry out the environmental measures. 

8. Section 125 of the said Act is repealed.

9. Subsection 126 (2) of the said Act is repealed.

10. Section 135 of the said Act is repealed and the following substituted therefor:

135.—(1) In this section, “official document” means, Definition

- (a) an approval, certificate, consent, licence, notice, permit, order or return under this Act or the regulations;
- (b) a certificate as to service of a document mentioned in clause (a);
- (c) a certificate or report as to the analysis, description, ingredients, quality, quantity or temperature of any solid, liquid or gas or any combination of any of them;
- (d) a certificate or report as to the analysis, description, quality or quantity of any odour, heat, sound, vibration, radiation or any combination of any of them;
- (e) a certificate or report as to the custody of any solid, liquid or gas or any combination of any of them;
- (f) a certificate as to the custody of any book, record or report or as to the custody of any other document; or
- (g) a certificate as to whether or not any document or notification was received or issued by the Minister or the Ministry under this Act or the regulations.

(2) An official document, other than an official document mentioned in clause (1) (c) or (d), that purports to be signed by the Minister, the Director or an employee in the Ministry shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in

Official
documents
as evidence

the official document without proof of the signature or position of the person appearing to have signed the official document.

Idem

(3) An official document mentioned in clause (1) (c), (d) or (e) that purports to be signed by an analyst shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

11. Section 136 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 23, is further amended by adding thereto the following subsection:

Regulations
relating to
Part X-A

(9) The Lieutenant Governor in Council may make regulations relating to Part X-A prescribing requirements for financial assurance in respect of the classes of approvals or orders specified in the regulations.

12. Section 141 of the said Act is repealed.

13. Section 144 of the said Act is amended by adding thereto the following subsection:

Power to
restrain by
order upon
conviction

(2) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other remedy and to any other penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the act or omission for which the person is convicted.

14.—(1) Subsection 146 (1) of the said Act is repealed and the following substituted therefor:

General
offence

(1) Every person who contravenes this Act or the regulations is guilty of an offence.

Offence
re order

(1a) Every person who fails to comply with an order under this Act is guilty of an offence.

Offence
re approval,
licence or
permit, etc.

(1b) Every person who fails to comply with a term or condition of a certificate of approval or of a provisional certificate of approval or of a licence or permit under this Act or who fails to comply with the terms of a report under section 29 is guilty of an offence.

(2) Subsection 146 (2) of the said Act is amended by striking out "subsection (1)" in the first line and inserting in lieu thereof "subsections (1), (1a) and (1b)".

(3) Section 146 of the said Act is amended by adding thereto the following subsections:

(3) Every person who is guilty of an offence under subsection (1), (1a) or (1b) or section 147a is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$5,000 on a first conviction and not more than \$10,000 on each subsequent conviction. Penalty

(4) Where a corporation is convicted of an offence under subsection (1), (1a) or (1b), the maximum fine that may be imposed for each day or part of a day on which the offence occurs or continues is \$25,000 on a first conviction and \$50,000 on each subsequent conviction and not as provided in subsection (3). Idem,
corporation

15. The said Act is further amended by adding thereto the following sections:

146a.—(1) Every corporation convicted of a contravention of subsection 13 (1) or 119 (1) is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not less than \$2,000 and not more than \$50,000 on a first conviction and not less than \$4,000 and not more than \$100,000 on each subsequent conviction and not as provided in section 146. Penalty re
actual
pollution

(2) Every person convicted of a contravention of subsection 13 (1) or 119 (1) is liable, in addition to or in substitution for the penalty set out in subsection 146 (3), to imprisonment for a term of not more than one year. Idem,
imprisonment

(3) Subsection (2) does not apply unless the court is satisfied that the person was notified, before entering his or her plea, that a penalty would be sought under subsection (2). Notice

146b. For the purposes of determining the penalty to which a person is liable under subsection 146 (3) or (4) or under subsection 146a (1), a conviction of the person for an offence under this Act is a subsequent conviction if the person has previously been convicted of an offence under, Subsequent
conviction

(a) this Act, other than for an offence related to Part VII (Sewage Systems) or Part VIII (Litter);

(b) the *Ontario Water Resources Act*, other than for an offence related to subsection 44 (2) or sections 45 to 48 (plumbing) of that Act; or R.S.O. 1980,
c. 361

(c) the *Pesticides Act*. R.S.O. 1980,
c. 376

Penalty re
monetary
benefit

146c. The court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may increase a fine imposed upon the person by an amount equal to the amount of the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence, notwithstanding any maximum fine elsewhere provided.

Order to
protect and
restore
natural
environment

146d.—(1) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a person of an offence under any other section of this Act, in addition to any other penalty imposed by the court, may order the person to take all or part of the action applied for to prevent, decrease or eliminate the effects on the natural environment of the offence and to restore the natural environment within the period or periods of time specified in the order.

Other
conditions

(2) An order under subsection (1) may contain such other conditions relating to the circumstances of the offence and of the person that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to rehabilitation.

Variation
of order

(3) The court that made an order under subsection (1) may, at any time upon its own initiative or upon application by counsel for the prosecutor or upon the application of the person convicted or counsel or agent for the person convicted, with notice to the other party, after a hearing or, with the consent of the parties, without a hearing, make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances.

Conflict

(4) Nothing in subsection (1) authorizes the making of an order that conflicts with an order previously made under this Act by the Minister or the Director, but an order may be made under subsection (1) supplementing the provisions of an order in respect of the prevention, decrease or elimination of harm to the natural environment and the restoration of the natural environment.

Time
period

(5) The court that makes an order under subsection (1) shall specify in the order the period for which it is to remain in force, which shall not be for more than one year from the date when the order takes effect.

Continuation
in force

(6) Where a person bound by an order under subsection (1) is imprisoned, the order continues in force except in so far as the imprisonment renders it impossible for the person to comply for the time being with the order.

146e.—(1) Where a person is in default of payment of a fine imposed upon conviction for an offence against this Act, the *Ontario Water Resources Act*, the *Pesticides Act* or the regulations made under any of them, on the application of the Director, an order may be made under subsection 70 (2) of the *Provincial Offences Act* directing that,

Suspension
for default
in payment
of fine
R.S.O. 1980,
cc. 361, 376,
400

- (a) one or more of the person's licences be suspended;
and
- (b) no licence be issued to the person,

until the fine is paid.

(2) The Director shall,

Duty of
Director

- (a) on being informed of an outstanding order referred to in subsection (1), suspend the person's licence, if it is not already suspended under another order referred to in subsection (1); and
- (b) on being informed that the fine and any applicable prescribed administrative fee for the reinstatement of the licence are paid, reinstate the licence, unless the Director has been informed that,
 - (i) there is another outstanding order referred to in subsection (1) directing that the licence be suspended, or
 - (ii) the licence is suspended under any other order or under another statute.

(3) The Lieutenant Governor in Council may make regulations prescribing forms and procedures and respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this section.

Regulations

(4) In this section, "licence" means a certificate of approval or provisional certificate of approval under Part V or a licence issued under this Act or the regulations.

Definition

146f. For the purposes of this Act and the regulations, an act or thing done or omitted to be done by an officer, official, employee or agent of a corporation in the course of his or her employment or in the exercise of his or her powers or the performance of his or her duties shall be deemed to be also an act or thing done or omitted to be done by the corporation.

Act of
officer, etc.

16.—(1) Subsection 147 (1) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 4, is amended by striking out “results or” in the sixth line and by striking out “the person is liable to a fine of not less than \$2,000 and not more than \$25,000 for the first offence and for each subsequent offence to a fine of not less than \$4,000 and not more than \$50,000 for every day or part thereof upon which the offence occurs or continues, and not as provided in the section under which the person is convicted” in the seven-teenth, eighteenth, nineteenth, twentieth, twenty-first and twenty-second lines and inserting in lieu thereof:

“the person is liable on conviction,

- (i) for each day or part of a day on which the offence occurs or continues to a fine of not less than \$2,000 and not more than \$5,000 on a first conviction and not less than \$4,000 and not more than \$15,000 on each subsequent conviction;
- (j) to imprisonment for a term of not more than one year; or
- (k) to both such fine and imprisonment,

instead of the fine elsewhere provided for the offence”.

(2) Subsections 147 (2), (3) and (4) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 4, are repealed and the following substituted therefor:



Idem,
corporation

(2) Where a corporation is convicted of an offence referred to in subsection (1), the corporation is liable, for each day on which the offence occurs or continues, to a fine of not less than \$2,000 and not more than \$50,000 on a first conviction and not less than \$4,000 and not more than \$100,000 on each subsequent conviction, instead of the fine elsewhere provided for the offence.

Penalty
where
adverse
effects occur

(3) Where a natural person is convicted of an offence referred to in subsection (1) that results in any of the effects mentioned in clauses (1) (a) to (h), the person is liable, for each day on which the offence occurs or continues, to a fine of not less than \$2,000 and not more than \$10,000 on a first conviction and not less than \$4,000 and not more than \$25,000 on each subsequent conviction, instead of the fine elsewhere provided for the offence.

Idem,
corporation

(4) Where a corporation is convicted of an offence referred to in subsection (1) that results in any of the effects mentioned

in clauses (1) (a) to (h), the corporation is liable, for each day on which the offence occurs or continues, to a fine of not less than \$2,000 and not more than \$250,000 on a first conviction and not less than \$4,000 and not more than \$500,000 on each subsequent conviction, instead of the fine elsewhere provided for the offence.

(5) Subsections (1) to (4) do not apply unless the court is satisfied that the defendant was notified before entering a plea that a penalty would be sought under subsection (1), (2), (3) or (4). Notice

17. The said Act is further amended by adding thereto the following section:

147a.—(1) Every director or officer of a corporation that engages in an activity that may result in the deposit, addition, emission or discharge of a contaminant into the natural environment contrary to this Act or the regulations has a duty to take all reasonable care to prevent the corporation from causing or permitting such unlawful deposit, addition, emission or discharge. Duty of director or officer

(2) Every person who has a duty under subsection (1) and who fails to carry out that duty is guilty of an offence. Offence

(3) A director or officer of a corporation is liable to conviction under this section whether or not the corporation has been prosecuted or convicted. Liability to conviction

PART II

Ontario Water Resources Act

18. Section 1 of the *Ontario Water Resources Act*, being chapter 361 of the Revised Statutes of Ontario, 1980, is amended,

(a) by relettering clause (a) as clause (aa); and

(b) by adding thereto the following clauses:

(a) “analyst” means an analyst appointed under the *Environmental Protection Act*;

R.S.O. 1980,
c. 141

.

(ia) “document” includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey,

book of account and information recorded or stored by means of any device.



19. The said Act is amended by adding thereto the following section:

The Crown

1a. Effective the 31st day of March, 1987, this Act binds the Crown.



20. Subsection 2 (2) of the said Act is repealed and the following substituted therefor:

Idem,
plumbing

(2) The Minister of Housing or such other member of the Executive Council to whom the administration may be assigned is responsible for the administration of sections 45, 46, 47 and 48.

21. Subsection 7 (4) of the said Act is repealed.

22. Subsection 10 (4) of the said Act is amended by striking out “and on conviction is liable to a fine or not more than \$200 for every day upon which the offence is committed or continues” in the fourth, fifth and sixth lines.

23.—(1) Subsection 16 (1) of the said Act is amended by striking out “and on conviction is liable on first conviction to a fine of not more than \$5,000 and on each subsequent conviction to a fine of not more than \$10,000 or to imprisonment for a term of not more than one year, or to both such fine and imprisonment” in the eighth, ninth, tenth, eleventh and twelfth lines.

(2) Subsection 16 (2) of the said Act is repealed.

(3) Subsection 16 (4) of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$5,000” in the third and fourth lines.

24. Subsections 17 (2) and (3) of the said Act are repealed.

25. Subsection 18 (2) of the said Act is repealed.

26. Subsection 19 (2) of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both” in the twelfth, thirteenth and fourteenth lines.

27. Subsection 20 (8) of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$200

for every day the contravention continues” in the seventh and eighth lines.

28. Section 22q of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 50, section 1, is repealed.

29.—(1) Subsection 23 (2) of the said Act is repealed.

(2) Subsection 23 (5) of the said Act is repealed and the following substituted therefor:

- (5) Every municipality or person that, Offence
- (a) fails to comply with any direction or order given or made by a Director under subsection (3); or
 - (b) contravenes any of the terms and conditions of the approval granted by a Director under subsection (4),

is guilty of an offence.

(3) Subsection 23 (6) of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$100” in the sixth and seventh lines.

(4) Subsection 23 (8) of the said Act is repealed and the following substituted therefor:

- (8) Every municipality or person that fails to comply with any direction given by a Director under subsection (7) is guilty of an offence. Offence

30.—(1) Subsection 24 (2) of the said Act is repealed.

(2) Subsection 24 (5) of the said Act is repealed and the following substituted therefor:


- (5) Every municipality or person that, Offence
- (a) fails to comply with any direction or order given or made by a Director under subsection (3); or
 - (b) contravenes any of the terms and conditions of the approval granted by a Director under subsection (4),

is guilty of an offence.



(3) Section 24 of the said Act is amended by adding thereto the following subsection:

Deemed
approval

(7) Every sewage works constructed, extended or altered by the Crown or by the former Ontario Water Resources Commission before the 1st day of July, 1987 or that is under construction, extension or alteration by the Crown on the 30th day of June, 1987 shall be deemed to be constructed, extended or altered in accordance with an approval under this section. 

31. Section 31 of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$100” in the sixth and seventh lines.

32. Subsection 32 (2) of the said Act is repealed and the following substituted therefor:

Offence


(2) Every municipality or person that fails to comply with any direction given by a Director under subsection (1) is guilty of an offence.

33. Subsection 33 (2) of the said Act is amended by striking out “and on conviction is liable to a fine of \$500 for every day upon which such default continues after receipt of the report” in the fourth, fifth and sixth lines.

34. Subsection 43 (12) of the said Act is repealed.



35.—(1) Subsection 44 (1) of the said Act is amended by adding thereto the following clause:

- (u) classifying materials and exempting any class of materials from the application of this Act or the regulations or any provision of this Act or the regulations when the materials are used for a purpose that is a benefit to the public and that is specified in the regulations, and prescribing conditions to which any such exemption shall be subject. 

(2) Subsection 44 (2) of the said Act is amended by striking out “Minister of Consumer and Commercial Relations” in the second line and inserting in lieu thereof “Minister of Housing or such other member of the Executive Council to whom the administration of sections 45, 46, 47 and 48 may be assigned”.

(3) Subsection 44 (4) of the said Act is amended by striking out “this section” in the second line and inserting in lieu thereof “subsection (2)”.

36. Section 50 of the said Act is repealed.

37. Subsection 51 (3) of the said Act is repealed.

38. Subsection 52 (2) of the said Act is repealed.

39. Section 56 of the said Act is amended by adding thereto the following subsection:

(2) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a municipality or person of an offence under this Act, in addition to any other remedy and to any other penalty imposed by law, may make an order prohibiting the continuation or repetition by the municipality or person of the act or omission for which the municipality or person is convicted.

Power to
restrain by
order upon
conviction

40. Section 59 of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$500” in the fifth and sixth lines.

41. The said Act is further amended by adding thereto the following sections:

66.—(1) Every municipality or person that contravenes this Act or the regulations is guilty of an offence.

Offence,
general

(2) Every municipality or person that fails to comply with an order, notice, direction, requirement or report made under this Act is guilty of an offence.

Offence
re order,
notice,
direction

(3) Every municipality or person that contravenes a term or condition of a licence, permit, approval or report made under this Act is guilty of an offence.

Offence
re licence,
permit,
approval

(4) Subsections (1) to (3) do not apply in respect of subsection 44 (4) or 46 (3).

Application
to
subss. 44 (4),
46 (3)

67.—(1) Every person convicted of an offence under this Act is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$5,000 on a first conviction and not more than \$10,000 on each subsequent conviction.

Penalty

(2) Where a municipality or other corporation is convicted of an offence under this Act, the maximum fine that may be imposed for each day or part of a day on which the offence occurs or continues is \$25,000 on a first conviction and \$50,000 on each subsequent conviction and not as provided in subsection (1).

Idem,
municipality
or
corporation

Application
to
subss. 44 (4),
46 (3)

(3) Subsections (1) and (2) do not apply in respect of sub-section 44 (4) or 46 (3).

Offences re
actual
pollution

68.—(1) Every person convicted of an offence under this Act in respect of subsection 16 (1) or clause 19 (2) (b) is liable, in addition to or in substitution for the penalties set out in section 67, to imprisonment for a term of not more than one year.

Idem,
municipality
or other
corporation

(2) Where a municipality or other corporation is convicted of an offence in respect of subsection 16 (1) or clause 19 (2) (b), the fine that may be imposed for each day or part of a day on which the offence occurs or continues is not less than \$2,000 and not more than \$50,000 on a first conviction and not less than \$4,000 and not more than \$100,000 on each subsequent conviction and not as provided in section 67.

Notice

(3) Subsection (1) does not apply unless the court is satisfied that the person was notified, before entering his or her plea, that a penalty would be sought under subsection (1).

Subsequent
conviction

69. For the purposes of determining the penalty to which a person or a municipality or other corporation is liable under section 67 or 68, a conviction for an offence under this Act is a subsequent conviction if the person or the municipality or other corporation has previously been convicted of an offence under,

(a) this Act, other than for an offence related to sub-section 44 (2) or sections 45 to 48 (plumbing);

R.S.O. 1980,
c. 141

(b) the *Environmental Protection Act*, other than for an offence related to Part VII—Sewage Systems or Part VIII—Litter; or

R.S.O. 1980,
c. 376

(c) the *Pesticides Act*. 

Penalty re
monetary
benefit

70. The court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may increase a fine imposed upon the person by an amount equal to the amount of the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence, notwithstanding any maximum fine elsewhere provided.

Order to
protect and
restore
environment

71.—(1) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a municipality or person of an offence under this Act, in addition to any other penalty imposed by the court, may order the municipality or person to take all or part of the action applied for to

prevent, decrease or eliminate the effects on the environment of the offence and to restore the environment within the period or periods of time specified in the order.

(2) An order under subsection (1) may contain such other conditions relating to the circumstances of the offence and of the municipality or person that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to rehabilitation.

Other
conditions

(3) The court that made an order under subsection (1) may, at any time upon its own initiative or upon application by counsel for the prosecutor or upon the application of the municipality or person convicted or counsel or agent for the municipality or person convicted, with notice to the other party, after a hearing or, with the consent of the parties, without a hearing, make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances.

Variation
of order

(4) Nothing in subsection (1) authorizes the making of an order that conflicts with an order, notice, direction or requirement or prevents the implementation of a report previously made under this Act by the Minister or a Director, but an order may be made under subsection (1) supplementing the provisions of an order in respect of the prevention, decrease or elimination of harm to the environment and the restoration of the environment.

Conflict

(5) The court that makes an order under subsection (1) shall specify in the order the period for which it is to remain in force, which shall not be for more than one year from the date when the order takes effect.

Time
period

(6) Where a person bound by an order under subsection (1) is imprisoned, the order continues in force except in so far as the imprisonment renders it impossible for the person to comply for the time being with the order.

Continuation
in force

72.—(1) Where a person is in default of payment of a fine imposed upon conviction for an offence against this Act, the *Environmental Protection Act*, the *Pesticides Act* or the regulations made under any of them, on the application of the Director, an order may be made under subsection 70 (2) of the *Provincial Offences Act* directing that,

Suspension
for default
in payment
of fine
R.S.O. 1980,
cc. 141, 376,
400

(a) one or more of the person's licences be suspended; and

(b) no licence be issued to the person,

until the fine is paid.

Duty of
Director

(2) The Director shall,

- (a) on being informed of an outstanding order referred to in subsection (1), suspend the person's licence, if it is not already suspended under another order referred to in subsection (1); and
- (b) on being informed that the fine and any applicable prescribed administrative fee for the reinstatement of the licence are paid, reinstate the licence, unless the Director has been informed that,
 - (i) there is another outstanding order referred to in subsection (1) directing that the licence be suspended, or
 - (ii) the licence is suspended under any other order or under another statute.

Regulations

(3) The Lieutenant Governor in Council may make regulations prescribing forms and procedures and respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this section.

Definition

(4) In this section, "licence" means a licence or permit under this Act or the regulations.

Act of
officer, etc.

73. For the purposes of this Act and the regulations, an act or thing done or omitted to be done by an officer, official, employee or agent of a municipality or other corporation in the course of his or her employment or in the exercise of his or her powers or the performance of his or her duties shall be deemed to be also an act or thing done or omitted to be done by the municipality or other corporation.

Definition

74.—(1) In this section, "official document" means,

- (a) an approval, certificate, consent, licence, notice, permit, order or return under this Act or the regulations;
- (b) a certificate as to service of a document mentioned in clause (a);
- (c) a certificate or report as to the analysis, description, ingredients, quality, quantity or temperature of any solid, liquid or gas or any combination of any of them;

- (d) a certificate or report as to the analysis, description, quality or quantity of any odour, heat, sound, vibration, radiation or any combination of any of them;
- (e) a certificate or report as to the custody of any solid, liquid or gas or any combination of any of them;
- (f) a certificate as to the custody of any book, record or report or as to the custody of any other document; or
- (g) a certificate as to whether or not any document or notification was received or issued by the Minister or the Ministry under this Act or the regulations.

(2) An official document, other than an official document mentioned in clause (1) (c) or (d), that purports to be signed by the Minister or an employee in the Ministry shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

Official documents as evidence

(3) An official document mentioned in clause (1) (c), (d) or (e) that purports to be signed by an analyst shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

Idem



42. The said Act is further amended by adding thereto the following section:

75.—(1) Every director or officer of a corporation that engages in an activity that may result in the discharge or deposit of any material of any kind with possible impairment of the quality of the water of any well, lake, river, pond, spring, stream, reservoir or other water or watercourse contrary to this Act or the regulations has a duty to take all reasonable care to prevent the corporation from causing or permitting such unlawful discharge or deposit.

Duty of director or officer

(2) Every person who has a duty under subsection (1) and who fails to carry out that duty is guilty of an offence.

Offence

(3) A director or officer of a corporation is liable to conviction under this section whether or not the corporation has been prosecuted or convicted.

Liability to conviction



PART III

Pesticides Act

43. Subsection 1 (1) of the *Pesticides Act*, being chapter 376 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clauses:

R.S.O. 1980,
c. 141

(aa) “analyst” means an analyst appointed under the *Environmental Protection Act*;

.

(ca) “document” includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device.

44. Section 8 of the said Act is repealed and the following substituted therefor:

Act of
officer, etc.

8. For the purposes of this Act and the regulations, an act or thing done or omitted to be done by an officer, official, employee or agent of a corporation in the course of his or her employment or in the exercise of his or her powers or the performance of his or her duties shall be deemed to be also an act or thing done or omitted to be done by the corporation.

45. Section 34 of the said Act is repealed and the following substituted therefor:

Offence

34.—(1) Every person who contravenes this Act or a regulation is guilty of an offence.

Offence,
orders

(2) Every person who fails to comply with an order under this Act is guilty of an offence.

Offence,
licence
or permit

(3) Every person who fails to comply with a term or condition of a licence or permit made or issued under this Act is guilty of an offence.

46. Section 34a of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 51, section 1, is renumbered as section 34f.

47. The said Act is amended by adding thereto the following sections:

Penalty

34a.—(1) Every person who is guilty of an offence under this Act is liable on conviction for each day or part of a day

on which the offence occurs or continues to a fine of not more than \$5,000 on a first conviction and not more than \$10,000 on each subsequent conviction.



(2) Where a corporation is convicted of an offence under this Act, the maximum fine that may be imposed for each day or part of a day on which the offence occurs or continues is \$25,000 on a first conviction and \$50,000 on each subsequent conviction and not as provided in subsection (1).

Idem,
corporation



34b. The court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may increase a fine imposed upon the person by an amount equal to the amount of the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence, notwithstanding any maximum fine elsewhere provided.

Penalty re
monetary
benefit

34c.—(1) Every person convicted under this Act for the contravention of section 4 or of a stop order made under section 20 is liable, in addition to or in substitution for the penalties set out in section 34a, to imprisonment for a term of not more than one year.

Offence re
actual
pollution



(2) Where a corporation is convicted of an offence under a section mentioned in subsection (1), the fine that may be imposed for each day or part of a day on which the offence occurs or continues is not less than \$2,000 and not more than \$50,000 on a first conviction and not less than \$4,000 and not more than \$100,000 on each subsequent conviction and not as provided in section 34a.

Idem,
corporation



(3) Subsection (1) does not apply unless the court is satisfied that the person was notified, before entering his or her plea, that a penalty would be sought under subsection (1).

Notice



(4) For the purposes of determining the penalty to which a person is liable under section 34a or under subsection (1) or (2) of this section, a conviction of the person for an offence under this Act is a subsequent conviction if the person has previously been convicted of an offence under,

Subsequent
conviction


(a) this Act;

(b) the *Environmental Protection Act*, other than for an offence related to Part VII—Sewage Systems or Part VIII—Litter; or

R.S.O. 1980,
c. 141

(c) the *Ontario Water Resources Act*, other than for an

R.S.O. 1980,
c. 361

offence related to subsection 44 (2) or sections 45 to 48 (plumbing) of that Act. 

Order re
damage

34d.—(1) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may order the person to take all or part of the action applied for to prevent, decrease or eliminate the effects on the environment of the offence and to restore the environment within the period or periods of time specified in the order.

Other
conditions

(2) An order under subsection (1) may contain such other conditions relating to the circumstances of the offence and of the person that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to rehabilitation.

Variation
of order

(3) The court that made an order under subsection (1) may, at any time upon its own initiative or upon application by counsel for the prosecutor or upon the application of the person convicted or counsel or agent for the person convicted, with notice to the other party, after a hearing or, with the consent of the parties, without a hearing, make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances.

Conflict

(4) Nothing in subsection (1) authorizes the making of an order that conflicts with an order previously made under this Act by the Minister or the Director, but an order may be made under subsection (1) supplementing the provisions of an order in respect of the prevention, decrease or elimination of harm to the environment and the restoration of the environment.

Time
period

(5) The court that makes an order under subsection (1) shall specify in the order the period for which it is to remain in force, which shall not be for more than one year from the date when the order takes effect.

Continuation
in force

(6) Where a person bound by an order under subsection (1) is imprisoned, the order continues in force except in so far as the imprisonment renders it impossible for the person to comply for the time being with the order.

Suspension
for default
in payment
of fine
R.S.O. 1980,
cc. 141, 361,
400

34e.—(1) Where a person is in default of payment of a fine imposed upon conviction for an offence against this Act, the *Environmental Protection Act*, the *Ontario Water Resources Act* or the regulations made under any of them, on

the application of the Director, an order may be made under subsection 70 (2) of the *Provincial Offences Act* directing that,

- (a) one or more of the person's licences be suspended; and
- (b) no licence be issued to the person,

until the fine is paid.

(2) The Director shall,

Duty of
Director

- (a) on being informed of an outstanding order referred to in subsection (1), suspend the person's licence, if it is not already suspended under another order referred to in subsection (1); and
- (b) on being informed that the fine and any applicable prescribed administrative fee for the reinstatement of the licence are paid, reinstate the licence, unless the Director has been informed that,
 - (i) there is another outstanding order referred to in subsection (1) directing that the licence be suspended, or
 - (ii) the licence is suspended under any other order or under another statute.

(3) The Lieutenant Governor in Council may make regulations prescribing forms and procedures and respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this section.

Regulations

(4) In this section, "licence" means a licence or permit under this Act or the regulations.

Definition

48. The said Act is further amended by adding thereto the following section:

34g.—(1) Every director or officer of a corporation that engages in an activity that may cause an effect mentioned in subsection (3) contrary to this Act or the regulations has a duty to take all reasonable care to prevent the corporation from causing or permitting such unlawful effect.

Duty of
director or
officer

(2) Every person who has a duty under subsection (1) and who fails to carry out that duty is guilty of an offence.

Offence


Effects

(3) The effect referred to in subsection (1) is any one or more of,

- (a) impairment of the quality of the environment for any use that can be made of it;
- (b) injury or damage to property or plant or animal life;
- (c) harm or material discomfort to any person;
- (d) an adverse effect on the health of any person;
- (e) impairment of the safety of any person; or
- (f) directly or indirectly rendering any property or plant or animal life unfit for human use,

from a pesticide or any substance or thing containing a pesticide to a greater degree than would necessarily result from the proper use or storage of the pesticide.

Liability to conviction

(4) A director or officer of a corporation is liable to conviction under this section whether or not the corporation has been prosecuted or convicted. 

49. Section 36 of the said Act is repealed and the following substituted therefor:

Definition

36.—(1) In this section, “official document” means,

- (a) an approval, certificate, consent, licence, notice, permit, order or return under this Act or the regulations;
- (b) a certificate as to service of a document mentioned in clause (a);
- (c) a certificate or report as to the analysis, description, ingredients, quality, quantity or temperature of any solid, liquid or gas or any combination of any of them;
- (d) a certificate or report as to the analysis, description, quality or quantity of any odour, heat, sound, vibration, radiation or any combination of any of them;
- (e) a certificate or report as to the custody of any solid, liquid or gas or any combination of any of them;

- (f) a certificate as to the custody of any book, record or report or as to the custody of any other document; or
- (g) a certificate as to whether or not any document or notification was received or issued by the Minister or the Ministry under this Act or the regulations.

(2) An official document, other than an official document mentioned in clause (1) (c) or (d), that purports to be signed by the Minister or an employee in the Ministry shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

Official documents as evidence

(3) An official document mentioned in clause (1) (c), (d) or (e) that purports to be signed by an analyst shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

Idem

50. Section 37 of the said Act is amended by adding thereto the following subsection:

(3) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other remedy and to any other penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the act or omission for which the person is convicted.

Power to restrain by order upon conviction

51. This Act comes into force on the day it receives Royal Assent.

Commencement

52. The short title of this Act is the *Environment Enforcement Statute Law Amendment Act, 1986*.

Short title

115
XB
1356

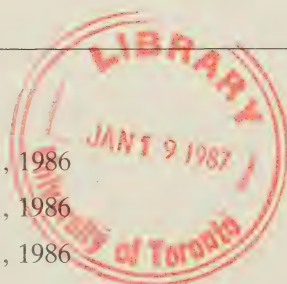
Bill 112

(Chapter 68
Statutes of Ontario, 1986)

An Act respecting the Enforcement of Statutes related to the Environment

The Hon. J. Bradley
Minister of the Environment

<i>1st Reading</i>	July 3rd, 1986
<i>2nd Reading</i>	December 16th, 1986
<i>3rd Reading</i>	December 18th, 1986
<i>Royal Assent</i>	December 18th, 1986





Bill 112**1986****An Act respecting the Enforcement of
Statutes related to the Environment**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I*Environmental Protection Act*

1.—(1) Subsection 1 (1) of the *Environmental Protection Act*, being chapter 141 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 52, section 1, is further amended,

- (a) by relettering clause (a) as (aa);
- (b) by adding thereto the following clauses:
 - (a) “adverse effects” means one or more of,
 - (i) impairment of the quality of the natural environment for any use that can be made of it,
 - (ii) injury or damage to property or to plant or animal life,
 - (iii) harm or material discomfort to any person,
 - (iv) an adverse effect on the health of any person,
 - (v) impairment of the safety of any person,
 - (vi) rendering any property or plant or animal life unfit for use by man,
 - (vii) loss of enjoyment of normal use of property, and

(viii) interference with the normal conduct of business;

(ab) "analyst" means an analyst appointed under this Act;

(cb) "document" includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device.

(c) in clause (1), by inserting after "municipality" in the first line "as defined in this subsection".

(2) Section 1 of the said Act is amended by adding thereto the following subsection:

Idem,
penalties

(3) A municipality that is convicted of an offence under this Act is liable to the penalty provided for a corporation convicted of the offence.

2. Section 4 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 3, is repealed and the following substituted therefor:

Directors

4.—(1) The Minister may appoint in writing as Directors,

- (a) such employees of the Ministry;
- (b) the members of such classes of employees of the Ministry; and
- (c) subject to the approval of the Lieutenant Governor in Council, such other persons or the members of such other classes of persons,

or any of them, as the Minister considers necessary in respect of such sections of this Act and in respect of such of the regulations or sections of the regulations as are set out in the appointments.

Analysts

(2) The Minister may in writing appoint as analysts or designate as provincial officers,

- (a) such employees of the Ministry;

- (b) the members of such classes of employees of the Ministry;
- (c) such other persons; and
- (d) the members of such classes of other persons,

or any of them, as the Minister considers necessary in respect of such sections of any Act administered by the Minister and in respect of such of the regulations or sections of the regulations under such Act as are set out in the appointments or designations.

(3) The Minister, in an appointment or designation under subsection (1) or (2), may limit the authority of a Director, analyst or provincial officer in such manner as the Minister considers necessary or advisable. Limitation
of authority

3. Section 6 of the said Act is amended by striking out “filed as provided by section 126” in the first and second lines and inserting in lieu thereof “a copy of which has been served upon the person responsible for a source of contaminant”.

4. Section 47 of the said Act is repealed.

5. Section 78 of the said Act is repealed and the following substituted therefor:

78.—(1) Every person who fails to comply with a provision of this Part or a provision of a regulation relating to this Part that relates to litter is guilty of an offence and is liable on conviction to a fine of not more than \$500 on a first conviction and not more than \$1,000 on each subsequent conviction. Offence

(2) Where a corporation is convicted of an offence under subsection (1), the maximum fine that may be imposed is \$1,000 on a first conviction and \$2,000 on each subsequent conviction and not as provided in subsection (1). Idem,
corporation

78a.—(1) Every person who fails to comply with a provision of this Part or a provision of a regulation relating to this Part that relates to packaging or containers rather than to litter is guilty of an offence and is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$1,000 on a first conviction and not more than \$2,000 on each subsequent conviction. Offence

(2) Where a corporation is convicted of an offence under subsection (1), the maximum fine that may be imposed for each day or part of a day on which the offence occurs or con- Idem,
corporation

tinues is \$3,000 on a first conviction and \$6,000 on each subsequent conviction and not as provided in subsection (1).

6. Clause 79 (1) (a) of the said Act is repealed.

7. The said Act is amended by adding thereto the following Part:

PART X-A

FINANCIAL ASSURANCE

Definitions

119a. In this Part,

“approval” means program approval, certificate of approval or provisional certificate of approval, and includes a permit or approval issued by a Director under the *Ontario Water Resources Act*, but does not include an approval under Part IX of this Act;

R.S.O. 1980,
c. 361

“bank” means a bank named in Schedule A or Schedule B to the *Bank Act* (Canada);

1980-81,
c. 40 (Can.)

“environmental measures” means one or more of the measures set out in clauses 119b (1) (a) to (c);

“financial assurance” means one or more of,

- (a) cash, in the amount specified in the approval or order,
- (b) a letter of credit from a bank, in the amount and terms specified in the approval or order,
- (c) negotiable securities issued or guaranteed by the Government of Ontario or the Government of Canada in the amount specified in the approval or order,
- (d) a personal bond accompanied by collateral security, each in the form, terms and amount specified in the approval or order,
- (e) a bond of a guarantee company approved under the *Guarantee Companies Securities Act*, in the form, terms and amount specified in the approval or order,
- (f) a bond of a guarantor, other than a guarantee company, accompanied by collateral security, each in

R.S.O. 1980,
c. 192

the form, terms and amount specified in the approval or order,

- (g) an agreement, in the form and terms specified in the approval or order, and
- (h) an agreement, in the form and terms prescribed by the regulations;

“order” means an order by the Director under this Act, and includes an order, notice, direction, requirement or report made by a Director under the *Ontario Water Resources Act*, but does not include an order under section 119c (order for performance of environmental measures) of this Act;

R.S.O. 1980,
c. 361

“works” means an activity, facility, thing, undertaking or site in respect of which an approval or order is issued.

119b.—(1) The Director may include in an approval or order in respect of a works a requirement that the person to whom the approval is issued or the order is directed provide financial assurance to the Crown in right of Ontario for any one or more of,

Financial
assurance for
compliance
with approval
or order

- (a) the performance of any action specified in the approval or order;
- (b) the provision of alternate water supplies to replace those that the Director has reasonable and probable grounds to believe are or are likely to be contaminated or otherwise interfered with by the works to which the approval or order is related; and
- (c) measures appropriate to prevent adverse effects upon and following the cessation or closing of the works.

(2) A requirement under subsection (1) may provide that the financial assurance may be provided, reduced or released in stages specified in the approval or order.

Changes in
amount of
financial
assurance

(3) The Director may amend an approval or order to change a requirement as to financial assurance contained in the approval or order.

Amendment
of approval
or order

119c.—(1) Failure to provide financial assurance specified in an approval or in accordance with a stage specified in an approval is grounds for revocation of the approval and for an order in writing by the Director prohibiting or restricting the

Failure to
provide
financial
assurance

carrying on, operation or use of the works in respect of which the financial assurance is required.

Idem,
order

(2) Failure to provide financial assurance specified in an order or in accordance with a stage specified in an order is grounds for an order in writing by the Director prohibiting or restricting the carrying on, operation or use of the works in respect of which the financial assurance is required.

Return or
release of
financial
assurance

119d.—(1) Upon request, part or all of the financial assurance given in respect of a works may be returned or released pursuant to an order in writing by the Director.

Grounds for
order

(2) The Director may make an order mentioned in subsection (1) if satisfied that the financial assurance returned or released is not required in respect of the works.

Continua-
tion of
financial
assurance

119e. The Director may convert a financial assurance to cash to be held by the Crown to the same purposes as the financial assurance or otherwise realize the financial assurance unless the financial assurance is renewed at least thirty days before it would otherwise expire.

Order for
use of
financial
assurance

119f.—(1) In the circumstances set out in subsection (2), the Director by order may require the performance of environmental measures for which the Crown holds financial assurance and may require the use of the financial assurance for the performance of the environmental measures.

Basis for
order

(2) The Director may make an order mentioned in subsection (1) if the Director has reasonable and probable ground to believe that any environmental measure required by the approval or order in respect of which the financial assurance was given has not been or will not be carried out in accordance with the requirement.

Parties
affected

(3) An order under this section shall be directed to the person to whom the approval or order under section 119b (financial assurance) was issued or directed and to any person that to the knowledge of the Director has provided the financial assurance for or on behalf of the person to whom the approval or order was issued, or shall be directed to the successor or assignee of any such person.

Perfor-
mance

(4) Upon the issuance of an order by the Director under subsection (1), the Crown may,

(a) use any cash;

- (b) realize any bond or other form of security, and use the money derived therefrom; and
- (c) enforce any agreement,

provided or obtained as the financial assurance for the performance of the environmental measures and may carry out the environmental measures.

8. Section 125 of the said Act is repealed.

9. Subsection 126 (2) of the said Act is repealed.

10. Section 135 of the said Act is repealed and the following substituted therefor:

135.—(1) In this section, “official document” means, Definition

- (a) an approval, certificate, consent, licence, notice, permit, order or return under this Act or the regulations;
- (b) a certificate as to service of a document mentioned in clause (a);
- (c) a certificate or report as to the analysis, description, ingredients, quality, quantity or temperature of any solid, liquid or gas or any combination of any of them;
- (d) a certificate or report as to the analysis, description, quality or quantity of any odour, heat, sound, vibration, radiation or any combination of any of them;
- (e) a certificate or report as to the custody of any solid, liquid or gas or any combination of any of them;
- (f) a certificate as to the custody of any book, record or report or as to the custody of any other document; or
- (g) a certificate as to whether or not any document or notification was received or issued by the Minister or the Ministry under this Act or the regulations.

(2) An official document, other than an official document mentioned in clause (1) (c) or (d), that purports to be signed by the Minister, the Director or an employee in the Ministry shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in

Official
documents
as evidence

the official document without proof of the signature or position of the person appearing to have signed the official document.

Idem

(3) An official document mentioned in clause (1) (c), (d) or (e) that purports to be signed by an analyst shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

11. Section 136 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 23, is further amended by adding thereto the following subsection:

Regulations relating to Part X-A

(9) The Lieutenant Governor in Council may make regulations relating to Part X-A prescribing requirements for financial assurance in respect of the classes of approvals or orders specified in the regulations.

12. Section 141 of the said Act is repealed.

13. Section 144 of the said Act is amended by adding thereto the following subsection:

Power to restrain by order upon conviction

(2) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other remedy and to any other penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the act or omission for which the person is convicted.

14.—(1) Subsection 146 (1) of the said Act is repealed and the following substituted therefor:

General offence

(1) Every person who contravenes this Act or the regulations is guilty of an offence.

Offence re order

(1a) Every person who fails to comply with an order under this Act is guilty of an offence.

Offence re approval, licence or permit, etc.

(1b) Every person who fails to comply with a term or condition of a certificate of approval or of a provisional certificate of approval or of a licence or permit under this Act or who fails to comply with the terms of a report under section 29 is guilty of an offence.

(2) Subsection 146 (2) of the said Act is amended by striking out "subsection (1)" in the first line and inserting in lieu thereof "subsections (1), (1a) and (1b)".

(3) Section 146 of the said Act is amended by adding thereto the following subsections:

(3) Every person who is guilty of an offence under subsection (1), (1a) or (1b) or section 147a is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$5,000 on a first conviction and not more than \$10,000 on each subsequent conviction. Penalty

(4) Where a corporation is convicted of an offence under subsection (1), (1a) or (1b), the maximum fine that may be imposed for each day or part of a day on which the offence occurs or continues is \$25,000 on a first conviction and \$50,000 on each subsequent conviction and not as provided in subsection (3). Idem, corporation

15. The said Act is further amended by adding thereto the following sections:

146a.—(1) Every corporation convicted of a contravention of subsection 13 (1) or 119 (1) is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not less than \$2,000 and not more than \$50,000 on a first conviction and not less than \$4,000 and not more than \$100,000 on each subsequent conviction and not as provided in section 146. Penalty re actual pollution

(2) Every person convicted of a contravention of subsection 13 (1) or 119 (1) is liable, in addition to or in substitution for the penalty set out in subsection 146 (3), to imprisonment for a term of not more than one year. Idem, imprisonment

(3) Subsection (2) does not apply unless the court is satisfied that the person was notified, before entering his or her plea, that a penalty would be sought under subsection (2). Notice

146b. For the purposes of determining the penalty to which a person is liable under subsection 146 (3) or (4) or under subsection 146a (1), a conviction of the person for an offence under this Act is a subsequent conviction if the person has previously been convicted of an offence under, Subsequent conviction

(a) this Act, other than for an offence related to Part VII (Sewage Systems) or Part VIII (Litter);

(b) the *Ontario Water Resources Act*, other than for an offence related to subsection 44 (2) or sections 45 to 48 (plumbing) of that Act; or R.S.O. 1980, c. 361

(c) the *Pesticides Act*. R.S.O. 1980, c. 376

Penalty re
monetary
benefit

146c. The court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may increase a fine imposed upon the person by an amount equal to the amount of the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence, notwithstanding any maximum fine elsewhere provided.

Order to
protect and
restore
natural
environment

146d.—(1) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a person of an offence under any other section of this Act, in addition to any other penalty imposed by the court, may order the person to take all or part of the action applied for to prevent, decrease or eliminate the effects on the natural environment of the offence and to restore the natural environment within the period or periods of time specified in the order.

Other
conditions

(2) An order under subsection (1) may contain such other conditions relating to the circumstances of the offence and of the person that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to rehabilitation.

Variation
of order

(3) The court that made an order under subsection (1) may, at any time upon its own initiative or upon application by counsel for the prosecutor or upon the application of the person convicted or counsel or agent for the person convicted, with notice to the other party, after a hearing or, with the consent of the parties, without a hearing, make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances.

Conflict

(4) Nothing in subsection (1) authorizes the making of an order that conflicts with an order previously made under this Act by the Minister or the Director, but an order may be made under subsection (1) supplementing the provisions of an order in respect of the prevention, decrease or elimination of harm to the natural environment and the restoration of the natural environment.

Time
period

(5) The court that makes an order under subsection (1) shall specify in the order the period for which it is to remain in force, which shall not be for more than one year from the date when the order takes effect.

Continuation
in force

(6) Where a person bound by an order under subsection (1) is imprisoned, the order continues in force except in so far as the imprisonment renders it impossible for the person to comply for the time being with the order.

146e.—(1) Where a person is in default of payment of a fine imposed upon conviction for an offence against this Act, the *Ontario Water Resources Act*, the *Pesticides Act* or the regulations made under any of them, on the application of the Director, an order may be made under subsection 70 (2) of the *Provincial Offences Act* directing that,

Suspension
for default
in payment
of fine
R.S.O. 1980,
cc. 361, 376,
400

(a) one or more of the person's licences be suspended;
and

(b) no licence be issued to the person,

until the fine is paid.

(2) The Director shall,

Duty of
Director

(a) on being informed of an outstanding order referred to in subsection (1), suspend the person's licence, if it is not already suspended under another order referred to in subsection (1); and

(b) on being informed that the fine and any applicable prescribed administrative fee for the reinstatement of the licence are paid, reinstate the licence, unless the Director has been informed that,

(i) there is another outstanding order referred to in subsection (1) directing that the licence be suspended, or

(ii) the licence is suspended under any other order or under another statute.

(3) The Lieutenant Governor in Council may make regulations prescribing forms and procedures and respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this section.

Regulations

(4) In this section, "licence" means a certificate of approval or provisional certificate of approval under Part V or a licence issued under this Act or the regulations.

Definition

146f. For the purposes of this Act and the regulations, an act or thing done or omitted to be done by an officer, official, employee or agent of a corporation in the course of his or her employment or in the exercise of his or her powers or the performance of his or her duties shall be deemed to be also an act or thing done or omitted to be done by the corporation.

Act of
officer, etc.

16.—(1) Subsection 147 (1) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 4, is amended by striking out “results or” in the sixth line and by striking out “the person is liable to a fine of not less than \$2,000 and not more than \$25,000 for the first offence and for each subsequent offence to a fine of not less than \$4,000 and not more than \$50,000 for every day or part thereof upon which the offence occurs or continues, and not as provided in the section under which the person is convicted” in the seveneenth, eighteenth, nineteenth, twentieth, twenty-first and twenty-second lines and inserting in lieu thereof:

“the person is liable on conviction,

- (i) for each day or part of a day on which the offence occurs or continues to a fine of not less than \$2,000 and not more than \$5,000 on a first conviction and not less than \$4,000 and not more than \$15,000 on each subsequent conviction;
- (j) to imprisonment for a term of not more than one year; or
- (k) to both such fine and imprisonment,

instead of the fine elsewhere provided for the offence”.

(2) Subsections 147 (2), (3) and (4) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 4, are repealed and the following substituted therefor:

Idem,
corporation

(2) Where a corporation is convicted of an offence referred to in subsection (1), the corporation is liable, for each day on which the offence occurs or continues, to a fine of not less than \$2,000 and not more than \$50,000 on a first conviction and not less than \$4,000 and not more than \$100,000 on each subsequent conviction, instead of the fine elsewhere provided for the offence.

Penalty
where
adverse
effects occur

(3) Where a natural person is convicted of an offence referred to in subsection (1) that results in any of the effects mentioned in clauses (1) (a) to (h), the person is liable, for each day on which the offence occurs or continues, to a fine of not less than \$2,000 and not more than \$10,000 on a first conviction and not less than \$4,000 and not more than \$25,000 on each subsequent conviction, instead of the fine elsewhere provided for the offence.

Idem,
corporation

(4) Where a corporation is convicted of an offence referred to in subsection (1) that results in any of the effects mentioned

in clauses (1) (a) to (h), the corporation is liable, for each day on which the offence occurs or continues, to a fine of not less than \$2,000 and not more than \$250,000 on a first conviction and not less than \$4,000 and not more than \$500,000 on each subsequent conviction, instead of the fine elsewhere provided for the offence.

(5) Subsections (1) to (4) do not apply unless the court is satisfied that the defendant was notified before entering a plea that a penalty would be sought under subsection (1), (2), (3) or (4). Notice

17. The said Act is further amended by adding thereto the following section:

147a.—(1) Every director or officer of a corporation that engages in an activity that may result in the deposit, addition, emission or discharge of a contaminant into the natural environment contrary to this Act or the regulations has a duty to take all reasonable care to prevent the corporation from causing or permitting such unlawful deposit, addition, emission or discharge. Duty of director or officer

(2) Every person who has a duty under subsection (1) and who fails to carry out that duty is guilty of an offence. Offence

(3) A director or officer of a corporation is liable to conviction under this section whether or not the corporation has been prosecuted or convicted. Liability to conviction

PART II

Ontario Water Resources Act

18. Section 1 of the *Ontario Water Resources Act*, being chapter 361 of the Revised Statutes of Ontario, 1980, is amended,

(a) by relettering clause (a) as clause (aa); and

(b) by adding thereto the following clauses:

(a) “analyst” means an analyst appointed under the *Environmental Protection Act*;

R.S.O. 1980,
c. 141

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(ia) “document” includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey,

book of account and information recorded or stored by means of any device.

19. The said Act is amended by adding thereto the following section:

The Crown

1a. Effective the 31st day of March, 1987, this Act binds the Crown.

20. Subsection 2 (2) of the said Act is repealed and the following substituted therefor:

Idem,
plumbing

(2) The Minister of Housing or such other member of the Executive Council to whom the administration may be assigned is responsible for the administration of sections 45, 46, 47 and 48.

21. Subsection 7 (4) of the said Act is repealed.

22. Subsection 10 (4) of the said Act is amended by striking out “and on conviction is liable to a fine or not more than \$200 for every day upon which the offence is committed or continues” in the fourth, fifth and sixth lines.

23.—(1) Subsection 16 (1) of the said Act is amended by striking out “and on conviction is liable on first conviction to a fine of not more than \$5,000 and on each subsequent conviction to a fine of not more than \$10,000 or to imprisonment for a term of not more than one year, or to both such fine and imprisonment” in the eighth, ninth, tenth, eleventh and twelfth lines.

(2) Subsection 16 (2) of the said Act is repealed.

(3) Subsection 16 (4) of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$5,000” in the third and fourth lines.

24. Subsections 17 (2) and (3) of the said Act are repealed.

25. Subsection 18 (2) of the said Act is repealed.

26. Subsection 19 (2) of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both” in the twelfth, thirteenth and fourteenth lines.

27. Subsection 20 (8) of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$200

for every day the contravention continues” in the seventh and eighth lines.

28. Section 22q of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 50, section 1, is repealed.

29.—(1) Subsection 23 (2) of the said Act is repealed.

(2) Subsection 23 (5) of the said Act is repealed and the following substituted therefor:

- (5) Every municipality or person that, Offence
- (a) fails to comply with any direction or order given or made by a Director under subsection (3); or
 - (b) contravenes any of the terms and conditions of the approval granted by a Director under subsection (4),

is guilty of an offence.

(3) Subsection 23 (6) of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$100” in the sixth and seventh lines.

(4) Subsection 23 (8) of the said Act is repealed and the following substituted therefor:

- (8) Every municipality or person that fails to comply with any direction given by a Director under subsection (7) is guilty of an offence. Offence

30.—(1) Subsection 24 (2) of the said Act is repealed.

(2) Subsection 24 (5) of the said Act is repealed and the following substituted therefor:

- (5) Every municipality or person that, Offence
- (a) fails to comply with any direction or order given or made by a Director under subsection (3); or
 - (b) contravenes any of the terms and conditions of the approval granted by a Director under subsection (4),

is guilty of an offence.

(3) Section 24 of the said Act is amended by adding thereto the following subsection:

Deemed
approval

(7) Every sewage works constructed, extended or altered by the Crown or by the former Ontario Water Resources Commission before the 1st day of July, 1987 or that is under construction, extension or alteration by the Crown on the 30th day of June, 1987 shall be deemed to be constructed, extended or altered in accordance with an approval under this section.

31. Section 31 of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$100” in the sixth and seventh lines.

32. Subsection 32 (2) of the said Act is repealed and the following substituted therefor:

Offence

(2) Every municipality or person that fails to comply with any direction given by a Director under subsection (1) is guilty of an offence.

33. Subsection 33 (2) of the said Act is amended by striking out “and on conviction is liable to a fine of \$500 for every day upon which such default continues after receipt of the report” in the fourth, fifth and sixth lines.

34. Subsection 43 (12) of the said Act is repealed.

35.—(1) Subsection 44 (1) of the said Act is amended by adding thereto the following clause:

(u) classifying materials and exempting any class of materials from the application of this Act or the regulations or any provision of this Act or the regulations when the materials are used for a purpose that is a benefit to the public and that is specified in the regulations, and prescribing conditions to which any such exemption shall be subject.

(2) Subsection 44 (2) of the said Act is amended by striking out “Minister of Consumer and Commercial Relations” in the second line and inserting in lieu thereof “Minister of Housing or such other member of the Executive Council to whom the administration of sections 45, 46, 47 and 48 may be assigned”.

(3) Subsection 44 (4) of the said Act is amended by striking out “this section” in the second line and inserting in lieu thereof “subsection (2)”.

36. Section 50 of the said Act is repealed.

37. Subsection 51 (3) of the said Act is repealed.

38. Subsection 52 (2) of the said Act is repealed.

39. Section 56 of the said Act is amended by adding thereto the following subsection:

(2) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a municipality or person of an offence under this Act, in addition to any other remedy and to any other penalty imposed by law, may make an order prohibiting the continuation or repetition by the municipality or person of the act or omission for which the municipality or person is convicted.

Power to
restrain by
order upon
conviction

40. Section 59 of the said Act is amended by striking out “and on conviction is liable to a fine of not more than \$500” in the fifth and sixth lines.

41. The said Act is further amended by adding thereto the following sections:

66.—(1) Every municipality or person that contravenes this Act or the regulations is guilty of an offence.

Offence,
general

(2) Every municipality or person that fails to comply with an order, notice, direction, requirement or report made under this Act is guilty of an offence.

Offence
re order,
notice,
direction

(3) Every municipality or person that contravenes a term or condition of a licence, permit, approval or report made under this Act is guilty of an offence.

Offence
re licence,
permit,
approval

(4) Subsections (1) to (3) do not apply in respect of subsection 44 (4) or 46 (3).

Application
to
subss. 44 (4),
46 (3)

67.—(1) Every person convicted of an offence under this Act is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$5,000 on a first conviction and not more than \$10,000 on each subsequent conviction.

Penalty

(2) Where a municipality or other corporation is convicted of an offence under this Act, the maximum fine that may be imposed for each day or part of a day on which the offence occurs or continues is \$25,000 on a first conviction and \$50,000 on each subsequent conviction and not as provided in subsection (1).

Idem,
municipality
or
corporation

Application
to
subss. 44 (4),
46 (3)

(3) Subsections (1) and (2) do not apply in respect of sub-section 44 (4) or 46 (3).

Offences re
actual
pollution

68.—(1) Every person convicted of an offence under this Act in respect of subsection 16 (1) or clause 19 (2) (b) is liable, in addition to or in substitution for the penalties set out in section 67, to imprisonment for a term of not more than one year.

Idem,
municipality
or other
corporation

(2) Where a municipality or other corporation is convicted of an offence in respect of subsection 16 (1) or clause 19 (2) (b), the fine that may be imposed for each day or part of a day on which the offence occurs or continues is not less than \$2,000 and not more than \$50,000 on a first conviction and not less than \$4,000 and not more than \$100,000 on each subsequent conviction and not as provided in section 67.

Notice

(3) Subsection (1) does not apply unless the court is satisfied that the person was notified, before entering his or her plea, that a penalty would be sought under subsection (1).

Subsequent
conviction

69. For the purposes of determining the penalty to which a person or a municipality or other corporation is liable under section 67 or 68, a conviction for an offence under this Act is a subsequent conviction if the person or the municipality or other corporation has previously been convicted of an offence under,

(a) this Act, other than for an offence related to sub-section 44 (2) or sections 45 to 48 (plumbing);

R.S.O. 1980,
c. 141

(b) the *Environmental Protection Act*, other than for an offence related to Part VII—Sewage Systems or Part VIII—Litter; or

R.S.O. 1980,
c. 376

(c) the *Pesticides Act*.

Penalty re
monetary
benefit

70. The court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may increase a fine imposed upon the person by an amount equal to the amount of the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence, notwithstanding any maximum fine elsewhere provided.

Order to
protect and
restore
environment

71.—(1) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a municipality or person of an offence under this Act, in addition to any other penalty imposed by the court, may order the municipality or person to take all or part of the action applied for to

prevent, decrease or eliminate the effects on the environment of the offence and to restore the environment within the period or periods of time specified in the order.

(2) An order under subsection (1) may contain such other conditions relating to the circumstances of the offence and of the municipality or person that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to rehabilitation.

Other
conditions

(3) The court that made an order under subsection (1) may, at any time upon its own initiative or upon application by counsel for the prosecutor or upon the application of the municipality or person convicted or counsel or agent for the municipality or person convicted, with notice to the other party, after a hearing or, with the consent of the parties, without a hearing, make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances.

Variation
of order

(4) Nothing in subsection (1) authorizes the making of an order that conflicts with an order, notice, direction or requirement or prevents the implementation of a report previously made under this Act by the Minister or a Director, but an order may be made under subsection (1) supplementing the provisions of an order in respect of the prevention, decrease or elimination of harm to the environment and the restoration of the environment.

Conflict

(5) The court that makes an order under subsection (1) shall specify in the order the period for which it is to remain in force, which shall not be for more than one year from the date when the order takes effect.

Time
period

(6) Where a person bound by an order under subsection (1) is imprisoned, the order continues in force except in so far as the imprisonment renders it impossible for the person to comply for the time being with the order.

Continuation
in force

72.—(1) Where a person is in default of payment of a fine imposed upon conviction for an offence against this Act, the *Environmental Protection Act*, the *Pesticides Act* or the regulations made under any of them, on the application of the Director, an order may be made under subsection 70 (2) of the *Provincial Offences Act* directing that,

Suspension
for default
in payment
of fine
R.S.O. 1980,
cc. 141, 376,
400

(a) one or more of the person's licences be suspended;
and

(b) no licence be issued to the person,

until the fine is paid.

Duty of
Director

(2) The Director shall,

- (a) on being informed of an outstanding order referred to in subsection (1), suspend the person's licence, if it is not already suspended under another order referred to in subsection (1); and
- (b) on being informed that the fine and any applicable prescribed administrative fee for the reinstatement of the licence are paid, reinstate the licence, unless the Director has been informed that,
 - (i) there is another outstanding order referred to in subsection (1) directing that the licence be suspended, or
 - (ii) the licence is suspended under any other order or under another statute.

Regulations

(3) The Lieutenant Governor in Council may make regulations prescribing forms and procedures and respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this section.

Definition

(4) In this section, "licence" means a licence or permit under this Act or the regulations.

Act of
officer, etc.

73. For the purposes of this Act and the regulations, an act or thing done or omitted to be done by an officer, official, employee or agent of a municipality or other corporation in the course of his or her employment or in the exercise of his or her powers or the performance of his or her duties shall be deemed to be also an act or thing done or omitted to be done by the municipality or other corporation.

Definition

74.—(1) In this section, "official document" means,

- (a) an approval, certificate, consent, licence, notice, permit, order or return under this Act or the regulations;
- (b) a certificate as to service of a document mentioned in clause (a);
- (c) a certificate or report as to the analysis, description, ingredients, quality, quantity or temperature of any solid, liquid or gas or any combination of any of them;

- (d) a certificate or report as to the analysis, description, quality or quantity of any odour, heat, sound, vibration, radiation or any combination of any of them;
- (e) a certificate or report as to the custody of any solid, liquid or gas or any combination of any of them;
- (f) a certificate as to the custody of any book, record or report or as to the custody of any other document; or
- (g) a certificate as to whether or not any document or notification was received or issued by the Minister or the Ministry under this Act or the regulations.

(2) An official document, other than an official document mentioned in clause (1) (c) or (d), that purports to be signed by the Minister or an employee in the Ministry shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

Official documents as evidence

(3) An official document mentioned in clause (1) (c), (d) or (e) that purports to be signed by an analyst shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

Idem

42. The said Act is further amended by adding thereto the following section:

75.—(1) Every director or officer of a corporation that engages in an activity that may result in the discharge or deposit of any material of any kind with possible impairment of the quality of the water of any well, lake, river, pond, spring, stream, reservoir or other water or watercourse contrary to this Act or the regulations has a duty to take all reasonable care to prevent the corporation from causing or permitting such unlawful discharge or deposit.

Duty of director or officer

(2) Every person who has a duty under subsection (1) and who fails to carry out that duty is guilty of an offence.

Offence

(3) A director or officer of a corporation is liable to conviction under this section whether or not the corporation has been prosecuted or convicted.

Liability to conviction

PART III

Pesticides Act

43. Subsection 1 (1) of the *Pesticides Act*, being chapter 376 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clauses:

R.S.O. 1980,
c. 141

(aa) “analyst” means an analyst appointed under the *Environmental Protection Act*;

.

(ca) “document” includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device.

44. Section 8 of the said Act is repealed and the following substituted therefor:

Act of
officer, etc.

8. For the purposes of this Act and the regulations, an act or thing done or omitted to be done by an officer, official, employee or agent of a corporation in the course of his or her employment or in the exercise of his or her powers or the performance of his or her duties shall be deemed to be also an act or thing done or omitted to be done by the corporation.

45. Section 34 of the said Act is repealed and the following substituted therefor:

Offence

34.—(1) Every person who contravenes this Act or a regulation is guilty of an offence.

Offence,
orders

(2) Every person who fails to comply with an order under this Act is guilty of an offence.

Offence,
licence
or permit

(3) Every person who fails to comply with a term or condition of a licence or permit made or issued under this Act is guilty of an offence.

46. Section 34a of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 51, section 1, is renumbered as section 34f.

47. The said Act is amended by adding thereto the following sections:

Penalty

34a.—(1) Every person who is guilty of an offence under this Act is liable on conviction for each day or part of a day

on which the offence occurs or continues to a fine of not more than \$5,000 on a first conviction and not more than \$10,000 on each subsequent conviction.

(2) Where a corporation is convicted of an offence under this Act, the maximum fine that may be imposed for each day or part of a day on which the offence occurs or continues is \$25,000 on a first conviction and \$50,000 on each subsequent conviction and not as provided in subsection (1). Idem, corporation

34b. The court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may increase a fine imposed upon the person by an amount equal to the amount of the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence, notwithstanding any maximum fine elsewhere provided. Penalty re monetary benefit

34c.—(1) Every person convicted under this Act for the contravention of section 4 or of a stop order made under section 20 is liable, in addition to or in substitution for the penalties set out in section 34a, to imprisonment for a term of not more than one year. Offence re actual pollution

(2) Where a corporation is convicted of an offence under a section mentioned in subsection (1), the fine that may be imposed for each day or part of a day on which the offence occurs or continues is not less than \$2,000 and not more than \$50,000 on a first conviction and not less than \$4,000 and not more than \$100,000 on each subsequent conviction and not as provided in section 34a. Idem, corporation

(3) Subsection (1) does not apply unless the court is satisfied that the person was notified, before entering his or her plea, that a penalty would be sought under subsection (1). Notice

(4) For the purposes of determining the penalty to which a person is liable under section 34a or under subsection (1) or (2) of this section, a conviction of the person for an offence under this Act is a subsequent conviction if the person has previously been convicted of an offence under, Subsequent conviction

(a) this Act;

(b) the *Environmental Protection Act*, other than for an offence related to Part VII—Sewage Systems or Part VIII—Litter; or R.S.O. 1980, c. 141

(c) the *Ontario Water Resources Act*, other than for an R.S.O. 1980, c. 361

offence related to subsection 44 (2) or sections 45 to 48 (plumbing) of that Act.

Order re
damage

34d.—(1) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may order the person to take all or part of the action applied for to prevent, decrease or eliminate the effects on the environment of the offence and to restore the environment within the period or periods of time specified in the order.

Other
conditions

(2) An order under subsection (1) may contain such other conditions relating to the circumstances of the offence and of the person that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to rehabilitation.

Variation
of order

(3) The court that made an order under subsection (1) may, at any time upon its own initiative or upon application by counsel for the prosecutor or upon the application of the person convicted or counsel or agent for the person convicted, with notice to the other party, after a hearing or, with the consent of the parties, without a hearing, make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances.

Conflict

(4) Nothing in subsection (1) authorizes the making of an order that conflicts with an order previously made under this Act by the Minister or the Director, but an order may be made under subsection (1) supplementing the provisions of an order in respect of the prevention, decrease or elimination of harm to the environment and the restoration of the environment.

Time
period

(5) The court that makes an order under subsection (1) shall specify in the order the period for which it is to remain in force, which shall not be for more than one year from the date when the order takes effect.

Continuation
in force

(6) Where a person bound by an order under subsection (1) is imprisoned, the order continues in force except in so far as the imprisonment renders it impossible for the person to comply for the time being with the order.

Suspension
for default
in payment
of fine
R.S.O. 1980,
cc. 141, 361,
400

34e.—(1) Where a person is in default of payment of a fine imposed upon conviction for an offence against this Act, the *Environmental Protection Act*, the *Ontario Water Resources Act* or the regulations made under any of them, on

the application of the Director, an order may be made under subsection 70 (2) of the *Provincial Offences Act* directing that,

- (a) one or more of the person's licences be suspended; and
- (b) no licence be issued to the person,

until the fine is paid.

(2) The Director shall,

Duty of
Director

- (a) on being informed of an outstanding order referred to in subsection (1), suspend the person's licence, if it is not already suspended under another order referred to in subsection (1); and
- (b) on being informed that the fine and any applicable prescribed administrative fee for the reinstatement of the licence are paid, reinstate the licence, unless the Director has been informed that,
 - (i) there is another outstanding order referred to in subsection (1) directing that the licence be suspended, or
 - (ii) the licence is suspended under any other order or under another statute.

(3) The Lieutenant Governor in Council may make regulations prescribing forms and procedures and respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this section.

Regulations

(4) In this section, "licence" means a licence or permit under this Act or the regulations.

Definition

48. The said Act is further amended by adding thereto the following section:

34g.—(1) Every director or officer of a corporation that engages in an activity that may cause an effect mentioned in subsection (3) contrary to this Act or the regulations has a duty to take all reasonable care to prevent the corporation from causing or permitting such unlawful effect.

Duty of
director or
officer

(2) Every person who has a duty under subsection (1) and who fails to carry out that duty is guilty of an offence.

Offence

Effects

(3) The effect referred to in subsection (1) is any one or more of,

- (a) impairment of the quality of the environment for any use that can be made of it;
- (b) injury or damage to property or plant or animal life;
- (c) harm or material discomfort to any person;
- (d) an adverse effect on the health of any person;
- (e) impairment of the safety of any person; or
- (f) directly or indirectly rendering any property or plant or animal life unfit for human use,

from a pesticide or any substance or thing containing a pesticide to a greater degree than would necessarily result from the proper use or storage of the pesticide.

Liability to conviction

(4) A director or officer of a corporation is liable to conviction under this section whether or not the corporation has been prosecuted or convicted.

49. Section 36 of the said Act is repealed and the following substituted therefor:

Definition

36.—(1) In this section, “official document” means,

- (a) an approval, certificate, consent, licence, notice, permit, order or return under this Act or the regulations;
- (b) a certificate as to service of a document mentioned in clause (a);
- (c) a certificate or report as to the analysis, description, ingredients, quality, quantity or temperature of any solid, liquid or gas or any combination of any of them;
- (d) a certificate or report as to the analysis, description, quality or quantity of any odour, heat, sound, vibration, radiation or any combination of any of them;
- (e) a certificate or report as to the custody of any solid, liquid or gas or any combination of any of them;

- (f) a certificate as to the custody of any book, record or report or as to the custody of any other document; or
- (g) a certificate as to whether or not any document or notification was received or issued by the Minister or the Ministry under this Act or the regulations.

(2) An official document, other than an official document mentioned in clause (1) (c) or (d), that purports to be signed by the Minister or an employee in the Ministry shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

Official documents as evidence

(3) An official document mentioned in clause (1) (c), (d) or (e) that purports to be signed by an analyst shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or position of the person appearing to have signed the official document.

Idem

50. Section 37 of the said Act is amended by adding thereto the following subsection:

(3) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other remedy and to any other penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the act or omission for which the person is convicted.

Power to restrain by order upon conviction

51. This Act comes into force on the day it receives Royal Assent.

Commencement

52. The short title of this Act is the *Environment Enforcement Statute Law Amendment Act, 1986*.

Short title

Bill 113

An Act to amend the Homemakers and Nurses Services Act

The Hon. J. Sweeney
Minister of Community and Social Services

1st Reading July 3rd, 1986
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTES

SECTION 1. Section 5 of the Act is re-enacted to authorize persons and organizations approved by the Ministry of Community and Social Services, in addition to municipalities and Indian bands, to deliver homemakers and nurses services to those persons entitled to such services under the Act.

SECTIONS 2 and 3. Sections 6 and 7 of the Act are amended to make it clear that persons eligible under sections 6 and 7 may only receive services from the persons or organizations referred to in section 5 of the Act.

SECTION 4. The new section 7a permits the Minister of Community and Social Services to furnish or to designate the Minister of Health to furnish services of a homemaker through persons or organizations approved by the Minister or the Minister of Health to classes of persons that will be prescribed in the regulations. The persons or organizations may either deliver the services directly or purchase the services.

SECTION 5. The new subsection 8 (2) of the Act requires that an application for services from a person or organization approved by the Minister or the Minister of Health under section 7a or designated by the Minister of Community and Social Services under section 5 shall be made directly to the person or organization.

SECTION 6. Section 9 of the Act requiring the charging of fees is amended so as to include persons or organizations designated by the Minister of Community and Social Services under section 5 but to exclude persons or organizations approved by the Minister or the Minister of Health under section 7a.

SECTION 7. Section 11 of the Act authorizing regulations is amended as follows:

1. Clauses (ha) and (k) provide for the payment of a provincial subsidy to persons or organizations delivering services with the approval of the Minister or the Minister of Health under section 7a.
2. Clause (m) is amended so as to restrict the authority to regulate the financial eligibility for services to persons in receipt of services from municipalities or Indian bands or, in the case of unorganized territories, to persons receiving services from the regional welfare administrator.
3. Clause (n) is repealed as the authority to inspect records is now provided for in section 6c of the *Ministry of Community and Social Services Act*.
4. The new clause (n) would authorize the Minister to fund programs other than homemaking services.
5. Clause (p) is repealed as it is no longer necessary.
6. The new subsection 11 (2) authorizes the making of regulations retroactive to the 31st day of March, 1985.

Bill 113

1986

An Act to amend the Homemakers and Nurses Services Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 5 of the *Homemakers and Nurses Services Act*, being chapter 200 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

5. A municipality, the council of a band or such other person or organization as the Minister may designate may employ homemakers or nurses or both for the purposes of this Act or may enter into an agreement with any person or organization for the furnishing of any services that may be provided under this Act for such person as may be agreed upon.

Provision of
services

2. Section 6 of the said Act is amended by striking out “this Act” in the second line and inserting in lieu thereof “section 5”.

3. Section 7 of the said Act is amended by striking out “this Act” in the first and second lines and inserting in lieu thereof “section 5”.

4. The said Act is amended by adding thereto the following section:

7a.—(1) The Minister may provide for the furnishing of the services of homemakers by such persons or organizations as the Minister may approve to such persons or classes of persons prescribed by the regulations.

Provision
of services
by health
organizations

(2) The Minister may designate the Minister of Health to provide for the furnishing of the services of homemakers by such persons or organizations as the Minister of Health may approve to such persons or classes of persons prescribed by the regulations.

Idem

Idem

(3) A person or organization approved by the Minister under subsection (1) or by the Minister of Health under subsection (2) may enter into an agreement with any person or organization for the furnishing of the services of a homemaker.

5. Section 8 of the said Act is amended by adding thereto the following subsection:

Idem

(2) Notwithstanding subsection (1), an application for the services of a homemaker furnished directly or indirectly by a person or organization approved by the Minister or the Minister of Health under section 7a or a person or organization other than a municipality or the council of a band designated by the Minister under section 5 shall be made to that person or organization.

6.—(1) Subsection 9 (1) of the said Act is repealed and the following substituted therefor:

Payment
for
services

(1) A person who applies for the services of a homemaker or nurse under section 5 and receives the services,

- (a) from a municipality, the council of a band, an organization designated by the Minister or pursuant to an agreement with the person or an organization; or
- (b) where the applicant resides in territory without municipal organization, provided for by the Minister or pursuant to an agreement with the Minister,

shall pay the fee for the services so long as and to the extent that the person's financial circumstances permit as determined by the regulations.

(2) Subsection 9 (2) of the said Act is amended by striking out "person's" in the first line and by inserting after "circumstances" in the first line "of a person referred to in subsection (1)".

7.—(1) Section 11 of the said Act is amended by adding thereto the following clause:

- (ha) providing for the reimbursement by the Province of Ontario to any person or organization approved by the Minister or the Minister of Health under section 7a, providing for the time, method and manner of determining the amount of such reimbursement and the terms and conditions for the payment thereof

and providing for the suspension and withholding of such payments and for making any deductions from such payments.

(2) Clause 11 (k) of the said Act is repealed and the following substituted therefor:

- (k) prescribing the conditions, terms and manner under which claims may be submitted to the Province of Ontario for reimbursement of moneys expended for services provided under this Act.

(3) Clause 11 (m) of the said Act is amended by adding at the end thereof “under section 9”.

(4) Clauses 11 (n) and (p) of the said Act are repealed and the following substituted therefor:

- (n) prescribing services in addition to homemaking services that may be provided by persons other than homemakers to persons eligible for homemaking services under section 7a and prescribing terms and conditions that apply to the provision of those additional services.

(5) The said section 11 is further amended by adding thereto the following subsection:

(2) A regulation made under clause (1) (g), (ha), (k) or (n) is, if it so provides, effective with reference to a period before it was filed, but not earlier than the 31st day of March, 1985. Idem

8. This Act shall be deemed to have come into force on the 31st day of March, 1985. Commence-
ment

9. The short title of this Act is the *Homemakers and Nurses Services Amendment Act, 1986*. Short title

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Bill 113

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 113

*(Chapter 58
Statutes of Ontario, 1986)*

An Act to amend the Homemakers and Nurses Services Act

The Hon. J. Sweeney
Minister of Community and Social Services



<i>1st Reading</i>	July 3rd, 1986
<i>2nd Reading</i>	November 19th, 1986
<i>3rd Reading</i>	November 27th, 1986
<i>Royal Assent</i>	November 27th, 1986

Bill 113

1986

An Act to amend the Homemakers and Nurses Services Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 5 of the *Homemakers and Nurses Services Act*, being chapter 200 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

5. A municipality, the council of a band or such other person or organization as the Minister may designate may employ homemakers or nurses or both for the purposes of this Act or may enter into an agreement with any person or organization for the furnishing of any services that may be provided under this Act for such person as may be agreed upon.

Provision of
services

2. Section 6 of the said Act is amended by striking out “this Act” in the second line and inserting in lieu thereof “section 5”.

3. Section 7 of the said Act is amended by striking out “this Act” in the first and second lines and inserting in lieu thereof “section 5”.

4. The said Act is amended by adding thereto the following section:

7a.—(1) The Minister may provide for the furnishing of the services of homemakers by such persons or organizations as the Minister may approve to such persons or classes of persons prescribed by the regulations.

Provision
of services
by health
organizations

(2) The Minister may designate the Minister of Health to provide for the furnishing of the services of homemakers by such persons or organizations as the Minister of Health may approve to such persons or classes of persons prescribed by the regulations.

Idem

Idem

(3) A person or organization approved by the Minister under subsection (1) or by the Minister of Health under subsection (2) may enter into an agreement with any person or organization for the furnishing of the services of a homemaker.

5. Section 8 of the said Act is amended by adding thereto the following subsection:

Idem

(2) Notwithstanding subsection (1), an application for the services of a homemaker furnished directly or indirectly by a person or organization approved by the Minister or the Minister of Health under section 7a or a person or organization other than a municipality or the council of a band designated by the Minister under section 5 shall be made to that person or organization.

6.—(1) Subsection 9 (1) of the said Act is repealed and the following substituted therefor:

Payment
for
services

(1) A person who applies for the services of a homemaker or nurse under section 5 and receives the services,

- (a) from a municipality, the council of a band, an organization designated by the Minister or pursuant to an agreement with the person or an organization; or
- (b) where the applicant resides in territory without municipal organization, provided for by the Minister or pursuant to an agreement with the Minister,

shall pay the fee for the services so long as and to the extent that the person's financial circumstances permit as determined by the regulations.

(2) Subsection 9 (2) of the said Act is amended by striking out "person's" in the first line and by inserting after "circumstances" in the first line "of a person referred to in subsection (1)".

7.—(1) Section 11 of the said Act is amended by adding thereto the following clause:

- (ha) providing for the reimbursement by the Province of Ontario to any person or organization approved by the Minister or the Minister of Health under section 7a, providing for the time, method and manner of determining the amount of such reimbursement and the terms and conditions for the payment thereof

and providing for the suspension and withholding of such payments and for making any deductions from such payments.

(2) Clause 11 (k) of the said Act is repealed and the following substituted therefor:

- (k) prescribing the conditions, terms and manner under which claims may be submitted to the Province of Ontario for reimbursement of moneys expended for services provided under this Act.

(3) Clause 11 (m) of the said Act is amended by adding at the end thereof “under section 9”.

(4) Clauses 11 (n) and (p) of the said Act are repealed and the following substituted therefor:

- (n) prescribing services in addition to homemaking services that may be provided by persons other than homemakers to persons eligible for homemaking services under section 7a and prescribing terms and conditions that apply to the provision of those additional services.

(5) The said section 11 is further amended by adding thereto the following subsection:

(2) A regulation made under clause (1) (g), (ha), (k) or (n) ^{Idem} is, if it so provides, effective with reference to a period before it was filed, but not earlier than the 31st day of March, 1985.

8. This Act shall be deemed to have come into force on the 31st day of March, 1985. <sup>Commence-
ment</sup>

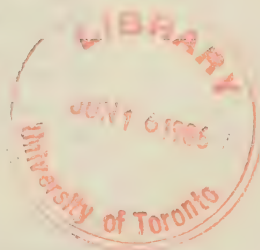
9. The short title of this Act is the *Homemakers and Nurses Services Amendment Act, 1986*. ^{Short title}

Bill 114

An Act to amend the Municipality of Metropolitan Toronto Act

The Hon. B. Grandmaître
Minister of Municipal Affairs

1st Reading July 3rd, 1986
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The purpose of the Bill is to increase the membership of the council of The Municipality of Metropolitan Toronto to forty-three members. The City of North York and the City of Etobicoke are each entitled to one additional member. The City of Scarborough is entitled to two additional members.

Bill 114

1986

**An Act to amend the
Municipality of Metropolitan Toronto Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 5 (1) of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1984, chapter 18, section 2, is repealed and the following substituted therefor:

(1) The area municipalities are entitled to the following membership on the Metropolitan Council:

Metropolitan
Council
membership

the Borough of East York	—	2 members
the City of Etobicoke	—	6 members
the City of North York	—	11 members
the City of Scarborough	—	9 members
the City of Toronto	—	12 members
the City of York	—	3 members

(2) Within sixty days of the coming into force of this section, the council of an area municipality that is entitled to additional membership on the Metropolitan Council as a result of the coming into force of this section shall appoint such number of additional members to the Metropolitan Council as is necessary to complete the representation of the area municipality on the Metropolitan Council.

Transition

(3) Appointments made under subsection (2) shall be made in accordance with section 5 of the *Municipality of Metropolitan Toronto Act*.

Idem

Commence-
ment

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the *Municipality of Metropolitan Toronto Amendment Act, 1986*.

Bill 115

An Act to amend the Ontario Lottery Corporation Act

The Hon. J. Eakins
Minister of Tourism and Recreation

1st Reading July 3rd, 1986
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The purpose of the Bill is to prohibit persons from engaging in a business that involves the sale, distribution or advertisement of lottery tickets unless authorized by the Ontario Lottery Corporation.

A penalty of \$50,000 or imprisonment for a term of not more than one year, or both, is provided in section 4.

Bill 115**1986**

**An Act to amend the
Ontario Lottery Corporation Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Ontario Lottery Corporation Act*, being chapter 344 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

- (ca) "lottery ticket" means a ticket or receipt issued under a lottery scheme conducted or managed by the Corporation under clause 7 (a) or (b) as evidence of participation in the scheme.

2. Section 5 of the said Act is amended by adding thereto the following subsection:

(4) The Board may make rules governing and regulating the lottery schemes conducted or managed by the Corporation under clause 7 (a) or (b) and without limiting the generality of the foregoing may regulate, Game rules

- (a) the amount and type of prizes;
- (b) the manner of selecting prize winners;
- (c) the conditions and qualifications for entitlement to prizes; and
- (d) the procedure for claiming prizes.

3. Section 8 of the said Act is repealed.

4. The said Act is amended by adding thereto the following sections:

Prohibitions
respecting
lottery tickets

13.—(1) No person shall engage in a business that involves the sale, advertisement or distribution of lottery tickets unless authorized by the Corporation.

Idem

(2) No person authorized by the Corporation to sell lottery tickets shall sell a lottery ticket to a member of the public at other than the face amount shown on the lottery ticket.

Idem

(3) No person shall purchase a lottery ticket in Ontario for the purpose of engaging in a business outside Ontario involving the sale, distribution or advertisement of lottery tickets.

Offence

14. Every person who contravenes subsection 13 (1), (2) or (3) and every director or officer of a corporation who authorized, permitted or acquiesced in the contravention of subsection 13 (1), (2) or (3) by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both.

Payment into
court

15. Where there is a dispute over entitlement to or payment of a prize or where two or more persons make adverse claims in respect of a prize, the Corporation may, in the case of a money prize, pay the money into the Supreme Court and, in the case of any other prize, deliver the prize or title documentation for the prize to the Supreme Court pending settlement or determination of the dispute by a court of competent jurisdiction.

Commence-
ment

5. This Act comes into force on the day it receives Royal Assent.

Short title

6. The short title of this Act is the *Ontario Lottery Corporation Amendment Act, 1986*.

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-B56

Bill 116

Government Bill

2ND SESSION, 33RD LEGISLATURE, ONTARIO
35 ELIZABETH II, 1986

Bill 116

An Act to revise
the Loan and Trust
Corporations Act

The Hon. M. Kwinter
*Minister of Financial
Institutions*

1st Reading July 3rd, 1986
2nd Reading
3rd Reading
Royal Assent

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Projet de loi 116

du gouvernement

2^e SESSION, 33^e LÉGISLATURE, ONTARIO
35 ELIZABETH II, 1986

Projet de loi 116

Loi portant révision de la
Loi sur les compagnies de
prêt et de fiducie

L'honorable M. Kwinter
*ministre des Institutions
financières*

1^{re} lecture 23 octobre 1986
2^e lecture
3^e lecture
sanction royale

Imprimé avec l'autorisation
de l'Assemblée législative par
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EXPLANATORY NOTES

The Bill revises the existing law related to loan and trust corporations. Among its principal features are the following:

1. New procedures are established for the incorporation of provincial loan and trust corporations.
2. Provincial and extra-provincial corporations will be required to adhere to essentially the same rules. Equality of treatment is obtained through the registration system.
3. All directors will be required to meet a new standard and duty of care.
4. Corporations must have at least five directors.
5. At least one-third of the board of directors must be outside directors.
6. New conflict of interest rules are introduced for directors and other restricted parties.
7. Limitations on cross-directorships are introduced.
8. The board of directors will be required to establish an audit committee and an investment committee.
9. New duties are imposed on the auditors of a corporation. Among other duties, an auditor will be required to report matters of which he or she becomes aware in the course of his or her duties that may adversely affect the corporation. The auditor will also report on conflicts of interest. Similar duties are imposed on other outside advisors such as lawyers and appraisers. The auditor will also be required to attend meetings of the audit committee.
10. The investment committee of a corporation will be required to develop prudent investment standards for the corporation and the corporation will be required to observe those standards.
11. Minimum capital requirements are increased for all corporations. Existing corporations will have five years to comply with the new requirements.
12. The borrowing multiple of a corporation (ie. its power to accept deposits) will be set at between ten and twenty-five times its assets and will be subject to approval by the Superintendent. The borrowing multiple will be reviewed by the Superintendent on an annual basis.
13. Investment powers of corporations will be expanded, subject to regulatory approval and quantum limits, to permit greater activity in the fields of commercial lending, commercial leasing and consumer lending.
14. Restrictions are placed on investments by or through subsidiaries of corporations.
15. The investment powers of loan corporations will be the same as those for trust corporations, but only trust corporations will be permitted in the business of estate and trust administration.
16. Provision is made for increased protection for persons dealing with a corporation in its capacity as a provider of estate, trust and agency services.

NOTES EXPLICATIVES

Le projet de loi porte révision de la loi existante relative aux compagnies de prêt et de fiducie. Quelques-unes de ses principales caractéristiques sont les suivantes :

1. Il est établi de nouvelles procédures de constitution des compagnies provinciales de prêt et de fiducie.
2. Les compagnies provinciales et extraprovinciales sont tenues d'obéir en grande partie aux mêmes règles. Le système d'inscription les met sur un pied d'égalité.
3. Les administrateurs sont tenus d'observer une nouvelle norme et un nouveau devoir de prudence.
4. Les compagnies de prêt et de fiducie comptent au moins cinq administrateurs.
5. Au moins un tiers du conseil d'administration se compose d'administrateurs externes.
6. Il est établi de nouvelles règles concernant les conflits d'intérêts et portant sur les administrateurs et les autres personnes assujetties à des restrictions.
7. Des limitations sont apportées à la participation d'une personne aux conseils d'administration de plus d'une compagnie inscrite.
8. Le conseil d'administration est tenu d'établir un comité de vérification et un comité de placements.
9. De nouvelles obligations incombent au vérificateur de la compagnie. Il est notamment tenu de faire rapport de toute situation dont il prend connaissance dans l'exercice de ses fonctions et qui peut porter atteinte à la situation de la compagnie. Il signale également l'existence de conflits d'intérêts. Des obligations semblables incombent à d'autres conseillers externes, notamment les avocats et les estimateurs. Le vérificateur est également tenu d'assister aux réunions du comité de vérification.
10. Le comité de placements est tenu d'élaborer des normes de placements sûrs que la compagnie est tenue d'observer.
11. Les normes de capital minimal de toutes les compagnies sont majorées. Un délai de cinq ans est accordé aux compagnies existantes pour se conformer aux nouvelles conditions.
12. Le multiplicateur d'emprunt de la compagnie (sa faculté de recevoir des dépôts), qui peut varier entre dix et vingt-cinq fois le montant de l'actif, est assujéti à l'approbation du surintendant, qui le soumet à un examen annuel.
13. Sous réserve des autorisations réglementaires et des limitations quant aux montants, les pouvoirs des compagnies sont accrus en ce qui a trait aux placements, afin d'élargir leur sphère d'activités dans le domaine des prêts commerciaux, des prêts à la consommation et des baux commerciaux.
14. Des restrictions sont apportées aux placements effectués par les filiales des compagnies ou par leur entremise.
15. Les pouvoirs des compagnies de prêt quant aux placements sont les mêmes que ceux des compagnies de fiducie. Toutefois, les activités d'administrateur de succession et de fiduciaire sont réservées aux seules compagnies de fiducie.
16. Les personnes auxquelles la compagnie fournit des services de fiduciaire jouissent d'une protection accrue.

17. The concept of a "restricted party" is introduced. Restricted parties, in general, are those people who are, or might reasonably be presumed to be, in a position to influence the decision making process in a corporation.
18. Rules against self-dealing are broadened. Self-dealing will include investments, loans and other transactions that involve restricted parties.
19. A market value test, for purposes of valuation, is introduced. A new test is also introduced for lending value for the purposes of mortgage lending.
20. Depositors will be entitled to obtain the annual financial statements of a corporation.
21. The regulatory system is strengthened. The Superintendent (formerly the Registrar) and the Director (a new officer) will have powers to order compliance with the Act. The Superintendent will also have the power to enter compliance programs. The Lieutenant Governor in Council will retain the present powers to seize a corporation.
22. New civil remedies such as tracing or recovery of assets through derivative actions and oppression remedies similar to those in the *Business Corporations Act, 1982* are provided.
23. There will be a compulsory review of the Act by the Legislature not later than 1997.

17. Est institué le concept de la «personne assujettie à des restrictions». Ces personnes, en général, sont celles qui sont en mesure d'exercer une influence dans le processus décisionnel de la compagnie, ou qui seraient normalement présumées l'être.
18. La portée des règles interdisant les opérations internes est élargie. Ces dernières comprennent en outre les placements, prêts et autres opérations qui intéressent les personnes assujetties à des restrictions.
19. L'épreuve fondée sur la valeur marchande est instaurée à des fins d'évaluation. Il y a aussi instauration de l'épreuve de la valeur hypothécable dans le cas des prêts hypothécaires.
20. Les déposants ont le droit d'obtenir les états financiers annuels de la compagnie.
21. Le système réglementaire est renforcé. Le surintendant (autrefois le registraire) et le directeur (nouveau fonctionnaire) sont dotés des moyens de faire observer la présente loi. Le surintendant peut aussi instaurer des programmes d'adhésion volontaire. Le lieutenant-gouverneur en conseil conserve sa prérogative actuelle de saisie de la compagnie.
22. De nouveaux recours civils sont prévus, notamment l'exercice du droit de suite ou le recouvrement d'éléments d'actif au moyen de l'action oblique et de recours en cas d'abus, semblables à ceux que prévoit la *Loi de 1982 sur les compagnies*.
23. Une étude obligatoire de la loi par l'Assemblée législative aura lieu au plus tard en 1997.

Bill 116

1986

An Act to revise the
Loan and Trust Corporations Act

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts as
follows:

PART I

INTERPRETATION AND APPLICATION

Definitions

1. In this Act,

“accountant” means a person who is a member of The Canadian Institute of Chartered Accountants and includes a partnership of which the partners are members of The Canadian Institute of Chartered Accountants;

Projet de loi 116**1986**

**Loi portant révision de la
Loi sur les compagnies de prêt et de fiducie**

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SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

PARTIE I

DÉFINITIONS ET CHAMP D'APPLICATION

1 Les définitions qui suivent s'appliquent à la présente loi. Définitions

«acte constitutif» Loi spéciale, charte, lettres patentes ou autre document en vertu duquel une compagnie est constituée ou fusionnée, y compris les modifications y apportées. «instrument of incorporation»

“affiliate” means a body corporate that is an affiliate within the meaning of subsection 2 (1);

1980-81,
c. 40 (Can.)

“bank” means a bank named in Schedule A or B to the *Bank Act* (Canada);

“body corporate” means any body corporate with or without share capital and wherever or however incorporated;

“branch” means an office of a corporation where it offers services to the public or where it provides fiduciary services;

“capital base” means the shareholders’ equity of a corporation calculated in the prescribed manner;

“common trust fund” means a fund maintained by a trust corporation in which moneys belonging to various estates and trusts in its care are combined for the purpose of facilitating investment;

“company” means a body corporate that is not a loan corporation, a trust corporation or a municipality or any local board thereof;

“corporation” means a loan corporation or a trust corporation whether incorporated in or outside of Ontario;

“deposit”, in relation to a corporation, means money received by it under section 153;

“depositor” means a person who has a deposit in a corporation;

“Director” means the Director appointed under subsection 175 (2);

“extra-provincial corporation” means a corporation that was incorporated under the laws of Canada or of any province, other than Ontario, or of any territory of Canada;

“financial statement” means a statement referred to in subsection 119 (1);

“improved real estate” means real estate,

- (a) on which there exists a building used or capable of being used for residential, financial, commercial, industrial, educational, professional, institutional, religious, charitable or recreational purposes,

- «actif total» Avoir des actionnaires et dépôts d'une compagnie, calculés selon le mode prescrit. «total assets»
- «action assortie du droit de vote» Action d'une personne morale d'une catégorie assortie d'un droit de vote absolu, ou d'une catégorie assortie d'un droit de vote en raison de la survenance d'une éventualité qui s'est produite et se poursuit. «voting share»
- «apport en capital» Avoir des actionnaires d'une compagnie, calculé selon le mode prescrit. «capital base»
- «banque» Banque désignée à l'annexe A ou B de la *Loi sur les banques* (Canada). «bank»
1980-1981,
chap. 40
(Can.)
- «bien immeuble amélioré» Bien immeuble : «improved real estate»
- a) sur lequel est érigé un bâtiment utilisé ou propre à servir à des fins domiciliaires, financières, commerciales, industrielles, éducatives, professionnelles, récréatives, institutionnelles ou religieuses, ou à des fins de bienfaisance;
 - b) sur lequel est en voie de construction ou sur le point de l'être un bâtiment propre à servir à des fins domiciliaires, financières, commerciales, industrielles, éducatives, professionnelles, récréatives, institutionnelles ou religieuses, ou à des fins de bienfaisance;
 - c) qui sert effectivement à une exploitation agricole;
 - d) qui est un terrain vague dans les limites d'une municipalité et dont les utilisations sont restreintes, notamment par les règlements relatifs au zonage, à des fins commerciales, industrielles ou domiciliaires.
- «biens immeubles» S'entend notamment des maisons, dépendances, terres, loyers et héritages, soit en franche ou en autre tenure, corporels ou incorporels, des tenures à bail et de la partie indivise de ces biens, de même que de tous les droits et domaines qui s'y rattachent, à l'exclusion des hydrocarbures, minéraux ou agrégats souterrains. «real estate»
- «compagnie» Compagnie de prêt ou de fiducie constituée en Ontario ou en dehors de cette province. «corporation»
- «compagnie de fiducie» Personne morale constituée ou exploitée aux fins d'offrir ses services au public en tant que fiduciaire, dépositaire, mandataire, exécuteur testamentaire, «trust corporation»

- (b) on which a building capable of being used for residential, financial, commercial, industrial, professional, institutional, educational, religious, charitable or recreational purposes is being or is about to be constructed,
- (c) on which *bona fide* farming operations are being conducted, or
- (d) vacant land within a municipality that is restricted by law in its use to commercial, industrial or residential purposes by zoning or otherwise;

“instrument of incorporation” means the special Act, charter, letters patent or other document incorporating or amalgamating a corporation and includes all amendments thereto;

“law of Ontario” includes any law of the former Province of Canada or of Upper Canada, continued as the law of Ontario, or consolidated or incorporated with the law of Ontario;

“lending value”, in relation to real estate, means the market value of the real estate reduced by such amounts as are attributable to contingencies or assumptions that have affected the market value of the real estate but which may not occur, multiplied by the lesser of,

- (a) 75 per cent, or
- (b) such percentage less than 75 per cent as the corporation has determined in accordance with its prudent investment standards to be appropriate in the circumstances;

“loan corporation” means a body corporate incorporated or operated for the purpose of borrowing money from the public by receiving deposits and lending or investing such money but does not include a bank, an insurance corporation, a trust corporation, a credit union or *caisse populaire* incorporated or registered under the *Credit Unions and Caisses Populaires Act* or an issuer registered under the *Investment Contracts Act*;

“market value” means the amount that might be expected to be realized in an arm’s length sale in the open market by a willing seller to a willing buyer;

administrateur successoral, séquestre, liquidateur, cessionnaire, tuteur aux biens d'un enfant mineur ou curateur aux biens d'une personne frappée d'incapacité mentale et aux fins de recevoir les dépôts du public et d'effectuer le prêt ou le placement de ces dépôts.

- «compagnie de prêt» Personne morale constituée ou exploitée aux fins d'effectuer des emprunts auprès du public en recevant des dépôts pour ensuite prêter ou placer les sommes reçues. Sont exclues de cette définition les banques, les compagnies d'assurances, les compagnies de fiducie, les caisses populaires et les *credit unions* constituées ou enregistrées en vertu de la *Loi sur les caisses populaires et les credit unions*, ainsi que les compagnies de placement inscrites aux termes de la *Loi sur les contrats de placement*. «loan corporation»
L.R.O. 1980, chap. 102, 221
- «compagnie extraprovinciale» Compagnie constituée en vertu des lois du Canada, d'une province autre que l'Ontario, ou d'un territoire du Canada. «extra-provincial corporation»
- «compagnie inscrite» Compagnie inscrite aux termes de la présente loi. «registered corporation»
- «compagnie provinciale» Compagnie constituée en vertu de la loi de l'Ontario. «provincial corporation»
- «compagnie qui fait appel au public» Compagnie dont les valeurs mobilières font l'objet d'un appel au public au sens du paragraphe 2 (6) et qui n'est pas réputée avoir cessé de faire appel au public en vertu d'une ordonnance de la Commission des valeurs mobilières de l'Ontario. «offering corporation»
- «comptable» Personne membre de l'Institut canadien des comptables agréés. S'entend en outre d'une société dont les associés sont membres de l'Institut précité. «accountant»
- «conjoint» Personne avec laquelle une personne du sexe opposé est mariée ou avec laquelle elle vit dans une union conjugale hors du mariage. «spouse»
- «corporation» Personne morale autre qu'une compagnie, une municipalité ou un conseil local d'une municipalité. «company»
- «déposant» Titulaire d'un dépôt auprès d'une compagnie. «depositor»
- «dépôt» En ce qui concerne une compagnie, sommes d'argent qu'elle reçoit en vertu de l'article 153. «deposit»
- «directeur» Le directeur nommé en vertu du paragraphe 175 (2). «Director»

“Minister” means the Minister of Financial Institutions or other such member of the Executive Council to whom the administration of this Act may be assigned;

“Ministry” means the Ministry of the Minister;

“mortgage” includes a charge or hypothec;

“offering corporation” means a corporation that is offering its securities to the public within the meaning of subsection 2 (6) and that is not the subject of an order of the Ontario Securities Commission deeming it to have ceased to be offering its securities to the public;

“officer” means the chairman and any vice-chairman of the board of directors, the president, any vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the general manager and any other person designated an officer by by-law or by resolution of the directors and any other individual who performs functions for the corporation similar to those normally performed by an individual occupying any such office;

“prescribed” means prescribed by the regulations;

“principal place of business” means,

- (a) in the case of a provincial corporation, the place in Ontario designated in its instrument of incorporation as its head office or as its principal place of business, and
- (b) in the case of a registered extra-provincial corporation, the place in Ontario designated in its registration as its principal place of business;

“provincial corporation” means a corporation incorporated under the law of Ontario;

“real estate” includes messuages, lands, rents and hereditaments, whether freehold or of any other tenure, and whether corporeal or incorporeal, and leasehold estates, and any undivided share thereof, and any estate, right or interest therein but does not include hydrocarbons, minerals or aggregates in or under the ground;

- «dirigeant» Le président et le vice-président du conseil d'administration, le président, le vice-président, le secrétaire, le secrétaire adjoint, le trésorier, le trésorier adjoint et le directeur général de la compagnie, et la personne désignée en tant que dirigeant par un règlement intérieur ou une résolution des administrateurs. S'entend en outre du particulier qui remplit auprès de la compagnie des fonctions semblables aux fonctions normalement exercées par le titulaire d'un de ces postes. «officer»
- «établissement principal» S'entend : «principal place of business»
- a) dans le cas de la compagnie provinciale, de l'endroit précis de l'Ontario qui figure à l'acte constitutif de la compagnie comme étant celui de son siège social ou de son établissement principal;
 - b) dans le cas de la compagnie extraprovinciale inscrite, de l'endroit précis de l'Ontario désigné lors de son inscription comme étant celui de son établissement principal.
- «état financier» État visé au paragraphe 119 (1). «financial statement»
- «fonds en fiducie collectif» Fonds tenu par une compagnie de fiducie et constitué de sommes d'argent provenant de diverses successions et fiducies qui lui sont confiées et qui sont réunies dans le but d'en faciliter le placement. «common trust fund»
- «hypothèque» S'entend en outre d'une charge et de l'hypothèque en droit civil. «mortgage»
- «la loi de l'Ontario» S'entend en outre d'une loi de l'ancienne province du Canada ou du Haut-Canada maintenue en vigueur en tant que loi de l'Ontario, ou refondue ou incorporée à cette dernière. «law of Ontario»
- «membre du même groupe» Personne morale qui est membre du même groupe au sens du paragraphe 2 (1). «affiliate»
- «ministère» Le ministère qui relève du ministre. «Ministry»
- «ministre» Le ministre des Institutions financières ou un autre membre du Conseil des ministres à qui l'application de la présente loi peut être confiée. «Minister»
- «nominatif (nominative)» S'il s'agit d'une valeur mobilière, celle qui : «registered form»

“registered corporation” means a corporation registered under this Act;

“registered form”, when applied to a security, means a security that,

- (a) specifies a person entitled to the security or to the rights it evidences, and the transfer of which is capable of being recorded in a securities register, or
- (b) bears a statement that it is in registered form;

“regulations” means the regulations made under this Act;

“resident Canadian” means an individual who is,

- (a) a Canadian citizen ordinarily resident in Canada,
- (b) a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons, or
- (c) a permanent resident within the meaning of the *Immigration Act, 1976* (Canada) and ordinarily resident in Canada, except a permanent resident who has been ordinarily resident in Canada for more than one year after the time at which he or she first became eligible to apply for Canadian citizenship;

1976-77,
c. 52 (Can.)

“restricted party” means a person who with respect to a corporation is,

- (a) an officer or director of the corporation,
- (b) a beneficial holder, directly or indirectly, of 10 per cent or more of any class of voting shares of the corporation,
- (c) a beneficial holder of 10 per cent or more of any class of non-voting shares of the corporation,
- (d) a beneficial holder, directly or indirectly, of 10 per cent or more of any class of voting shares of an affiliate of the corporation,
- (e) an affiliate of the corporation,
- (f) an employee or auditor of the corporation,

- a) ou bien désigne nommément la personne qui est titulaire de cette valeur ou des droits qui y sont attestés et dont le transfert est susceptible d'être inscrit à un registre des valeurs mobilières;
- b) ou bien porte la mention qu'elle est nominative.

«personne assujettie à des restrictions» S'entend de la personne qui, à l'égard d'une compagnie, est : «restricted party»

- a) le dirigeant ou l'administrateur de la compagnie;
- b) le détenteur bénéficiaire, directement ou indirectement, de 10 pour cent ou plus d'une catégorie d'actions de la compagnie assorties du droit de vote;
- c) le détenteur bénéficiaire de 10 pour cent ou plus d'une catégorie d'actions de la compagnie non assorties du droit de vote;
- d) le détenteur bénéficiaire, directement ou indirectement, de 10 pour cent ou plus d'une catégorie d'actions assorties du droit de vote d'un membre du même groupe que la compagnie;
- e) un membre du même groupe que la compagnie;
- f) l'employé ou le vérificateur de la compagnie;
- g) l'administrateur ou le dirigeant de la personne morale visée aux alinéas b) ou c);
- h) le conjoint ou l'enfant du particulier visé aux alinéas a), b), c) ou d);
- i) un parent du particulier visé aux alinéas a), b), c) ou d) ou de son conjoint, qui habite avec le particulier ou avec le conjoint;
- j) la personne morale dont la personne visée aux alinéas a), b), c), f), g) ou h) est le détenteur bénéficiaire, directement ou indirectement, de 10 pour cent ou plus d'une catégorie quelconque d'actions, assorties du droit de vote;
- k) la personne désignée en tant que personne assujettie à des restrictions en vertu de l'article 139.

«personne morale» Personne morale avec ou sans capital-actions sans égard au lieu ou au mode de constitution. «body corporate»

- (g) a director or officer of a body corporate described in clause (b) or (c),
- (h) a spouse or child of an individual described in clause (a), (b), (c) or (d),
- (i) any relative of an individual described in clause (a), (b), (c) or (d) or of his or her spouse who has the same home as such individual or spouse,
- (j) a body corporate in which a person described in clause (a), (b), (c), (f), (g) or (h) is the beneficial holder, directly or indirectly, of 10 per cent or more of any class of voting shares,
- (k) a person designated under section 139 as a restricted party;

“securities register” means the register referred to in subsection 126 (1);

“security” means a share of any class or series of shares or a debt obligation of a body corporate and includes a certificate evidencing such a share or debt obligation and includes a warrant but does not include a deposit or any instrument evidencing a deposit in a corporation;

“special resolution” means a resolution that is,

- (a) submitted to a meeting of the shareholders of a corporation duly called for the purpose of considering the resolution and passed, with or without amendment, at the meeting by at least two-thirds of the votes cast, or
- (b) consented to in writing by each shareholder of the corporation entitled to vote at such a meeting or the shareholder’s agent authorized in writing;

“spouse” means the person to whom a person of the opposite sex is married or with whom the person is living in a conjugal relationship outside marriage;

“subordinated note” means a note issued under section 156;

“Superintendent” means the Superintendent of Deposit Institutions appointed under this Act;

- «prescrit» Prescrit par les règlements. «prescribed»
- «registre de valeurs mobilières» Le registre visé au paragraphe 126 (1). «securities register»
- «règlements» Les règlements pris en application de la présente loi. «regulations»
- «résident canadien» S'entend :
- a) du citoyen canadien qui réside ordinairement au Canada;
 - b) du citoyen canadien qui ne réside pas ordinairement au Canada, mais qui fait partie d'une catégorie prescrite de personnes;
 - c) d'un résident permanent au sens de la *Loi sur l'immigration de 1976* (Canada) qui réside ordinairement au Canada, à l'exclusion d'un résident permanent qui a résidé de façon ordinaire au Canada pendant plus d'un an après avoir acquis pour la première fois le droit de demander la citoyenneté canadienne. S.C. 1976-1977, chap. 52 (Can.)
- «résolution spéciale» Résolution qui est : «special resolution»
- a) soit proposée à une assemblée des actionnaires de la compagnie convoquée à cette fin et adoptée, avec ou sans amendements, aux deux tiers au moins des voix exprimées;
 - b) soit adoptée du consentement écrit de chaque actionnaire de la compagnie habile à voter lors d'une telle assemblée, ou de son mandataire muni d'une autorisation écrite.
- «succursale» Bureau de la compagnie, où elle offre des services au public ou fournit des services fiduciaires. «branch»
- «surintendant» Le surintendant des institutions de dépôt nommé aux termes de la présente loi. «Superintendent»
- «titre subalterne» Titre émis aux termes de l'article 156. «subordinated note»
- «valeur hypothécable» Relativement à un bien immeuble, valeur marchande, déduction faite des montants qui tiennent compte des imprévus qui peuvent ne pas se produire ou des prévisions qui peuvent ne pas se réaliser, mais qui «lending value»

“total assets” means the shareholders’ equity and deposits of a corporation, calculated in the prescribed manner;

“trust corporation” means a body corporate incorporated or operated for the purpose of offering its services to the public to act as trustee, bailee, agent, executor, administrator, receiver, liquidator, assignee, guardian of a minor’s estate or committee of a mentally incompetent person’s estate and for the purpose of receiving deposits from the public and of lending or investing such deposits;

“voting share” means any share of any class of shares of a body corporate carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing.

Deemed
affiliation

2.—(1) For the purposes of this Act,

- (a) a body corporate shall be deemed to be affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and
- (b) the affiliates of every body corporate shall be deemed to be affiliated with all other bodies corporate with which the body corporate is affiliated.

Deemed
control

(2) For the purposes of this Act, except sections 59 to 61, a body corporate shall be deemed to be controlled by a person if,

- (a) securities of the body corporate to which are attached more than 50 per cent of the votes that may be cast to elect directors of the body corporate are held other than by way of security only by or for the benefit of that person; and
- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate.

ont une incidence sur la valeur marchande de l'immeuble, multipliée par le moins élevé des pourcentages suivants :

- a) 75 pour cent;
- b) le pourcentage inférieur à 75 pour cent que la compagnie juge approprié dans les circonstances, conformément à ses normes de placements sûrs.

«valeur marchande» Somme susceptible d'être réalisée lors de la vente sur le marché libre intervenue entre le vendeur consentant et l'acheteur consentant qui n'ont pas de lien de dépendance. «market value»

«valeur mobilière» Action d'une catégorie ou d'une série, titre de créance d'une personne morale et certificat qui en atteste l'existence. S'entend en outre du bon de souscription, à l'exclusion du dépôt ou de l'effet qui atteste le dépôt effectué auprès d'une compagnie. «security»

2 (1) Pour l'application de la présente loi :

- a) une personne morale est réputée un membre du même groupe qu'une autre si l'une est la filiale de l'autre ou si les deux sont des filiales de la même personne morale ou si une même personne a le contrôle de chacune d'elles;
- b) les membres du même groupe qu'une personne morale sont réputés membres des mêmes groupes que toutes les autres personnes morales avec lesquelles celle-ci est elle-même membre du même groupe.

Personne morale réputée membre du même groupe

(2) Pour l'application de la présente loi, à l'exception des articles 59 à 61, une personne morale est réputée être sous le contrôle d'une personne si :

Contrôle réputé

- a) d'une part, celle-ci détient ou est bénéficiaire autrement qu'à titre de garantie seulement, de valeurs mobilières de la personne morale qui comportent plus de 50 pour cent des voix qui peuvent être exprimées pour élire les administrateurs;
- b) d'autre part, le nombre de voix rattachées à ces valeurs mobilières suffit à élire une majorité d'administrateurs de cette personne morale.

Deemed
holding body
corporate

(3) For the purposes of this Act, a body corporate shall be deemed to be the holding body corporate of all of its subsidiaries.

Deemed
subsidiary

(4) For the purposes of this Act, a body corporate shall be deemed to be the subsidiary of another body corporate if it is controlled by that other body corporate.

"Down-
stream"
investments

(5) For the purposes of this Act, where a person or group of persons owns beneficially, directly or indirectly, shares of a body corporate, that person or group of persons shall be deemed to own beneficially that proportion of shares of every other body corporate that is owned beneficially, directly or indirectly, by the first-mentioned body corporate, that is equal to the proportion of shares of the first-mentioned body corporate that is owned beneficially, directly or indirectly, by that person or group of persons.

Offering
securities
to public

(6) For the purposes of this Act, a body corporate is offering its securities to the public only where,

(a) in respect of any of its securities, a prospectus, statement of material facts or securities exchange take-over bid or issuer bid circular has been filed under the *Securities Act* or any predecessor thereof or a prospectus has been filed under *The Corporations Information Act*, being chapter 72 of the Revised Statutes of Ontario, 1960, or any predecessor thereof, so long as any of such securities are outstanding or any securities into which such securities are converted are outstanding; or

(b) any of its securities have been at any time since the 1st day of May, 1967, listed and posted for trading on any stock exchange in Ontario recognized by the Ontario Securities Commission regardless of when such listing and posting for trading commenced,

except that where, upon the application of a body corporate that has fewer than fifteen security holders, the Ontario Securities Commission is satisfied that to do so would not be prejudicial to the public interest, the Commission may order, subject to such terms and conditions as it may impose, that the body corporate shall be deemed to have ceased to be offering its securities to the public.

Related
persons

(7) For the purposes of sections 62 to 69 and section 166, a person shall be deemed to be related to,

(3) Pour l'application de la présente loi, une personne morale est réputée la personne morale mère à l'égard de chacune de ses filiales.

Personne morale mère réputée

(4) Pour l'application de la présente loi, une personne morale est réputée la filiale d'une autre si elle est sous le contrôle de cette autre personne morale.

Filiale réputée

(5) Pour l'application de la présente loi, la personne ou le groupe de personnes propriétaires bénéficiaires, directement ou indirectement, d'actions d'une personne morale, sont réputées propriétaires bénéficiaires d'un nombre d'actions de chacune des autres personnes morales dont la personne morale citée en premier lieu est propriétaire qui est proportionnel au nombre d'actions de cette dernière que ces personnes détiennent au même titre.

Placements en aval

(6) Pour l'application de la présente loi, une personne morale ne fait appel au public que dans l'un des cas suivants :

Appel au public

a) elle a déposé à l'égard de ses valeurs mobilières, un prospectus, un exposé des faits pertinents ou une circulaire d'offre d'achat en bourse visant à la mainmise ou une circulaire d'offre de l'émetteur en vertu de la *Loi sur les valeurs mobilières* ou d'une loi que celle-ci remplace, ou elle a déposé un prospectus en vertu de *The Corporations Information Act*, qui constitue le chapitre 72 des Lois refondues de l'Ontario de 1960 ou d'une loi que celle-ci remplace, tant que sont en circulation ces mêmes valeurs mobilières ou celles qui résultent de leur conversion;

L.R.O. 1980, chap. 466

b) certaines de ses valeurs mobilières ont été, à un moment donné depuis le 1^{er} mai 1967, officiellement cotées à une bourse de l'Ontario reconnue par la Commission des valeurs mobilières de l'Ontario, sans égard à la date de leur inscription.

Toutefois, à la demande d'une personne morale comportant moins de quinze détenteurs de ses valeurs mobilières, lorsque la Commission est convaincue que le public n'en subira aucun préjudice, elle peut rendre une ordonnance, aux conditions qu'elle fixe, selon laquelle la personne morale est réputée avoir cessé de faire appel au public.

(7) Pour l'application des articles 62 à 69 et de l'article 166, une personne est réputée liée :

Personnes liées

- (a) every company or corporation of which the person beneficially owns, directly or indirectly, voting shares carrying more than 10 per cent of the voting rights attached to all voting securities of the company or corporation for the time being outstanding;
- (b) every partner of the person;
- (c) every trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar capacity; or
- (d) any spouse or child of the person or any relative of the person or of the spouse who has the same home as the person.

Application
of Act

3.—(1) This Act applies to all corporations unless specifically limited to provincial corporations.

Idem

(2) Where there is a conflict between a provision of the instrument of incorporation of a provincial corporation or of any special Act of Ontario in relation to any corporation and a provision of this Act or the regulations, the provision of this Act or the regulations, as the case may be, prevails.

Non-
application
of Act

4. This Act does not apply to a body corporate that is authorized, constituted or operated for the purpose of lending money on the security of real estate or for the purpose of investing money in mortgages, where the body corporate borrows only by way of,

- (a) loans from banks or registered corporations in the usual course of business; or
- (b) the issue of debentures, notes or like obligations of an amount not less than \$100,000 each to any one person on the person's account, whereby the body corporate is not obligated or cannot by demand of the holder be obligated to repay the money secured by the debenture, note or obligation within five years from the date of its issue.

- a) à la corporation ou compagnie à l'égard de laquelle elle est, directement ou indirectement, propriétaire bénéficiaire d'actions comportant plus de 10 pour cent des droits de vote sur l'ensemble des valeurs mobilières de la corporation ou compagnie avec droit de vote en circulation;
- b) à chacun des associés de cette personne;
- c) à la fiducie ou à la succession sur laquelle la personne a un droit important à titre bénéficiaire ou à l'égard de laquelle elle remplit les fonctions de fiduciaire ou des fonctions analogues;
- d) au conjoint ou à l'enfant de cette personne ou au parent de celle-ci ou de son conjoint qui habitent avec la personne ou avec le conjoint.

3 (1) La présente loi s'applique à toutes les compagnies, sauf les cas où elle ne vise expressément que les compagnies provinciales.

Application
de la présente
loi

(2) La disposition pertinente de la présente loi ou des règlements prime en cas de conflit entre celle-ci et la disposition de l'acte constitutif d'une compagnie provinciale ou d'une loi spéciale de l'Ontario portant sur une compagnie.

Idem

4 La présente loi ne s'applique pas à la personne morale constituée ou exploitée dans le but de consentir des prêts de sommes d'argent garantis par des sûretés immobilières ou d'effectuer des placements sur hypothèque, si cette personne morale effectue des emprunts uniquement au moyen :

Non-applica-
tion de la loi

- a) d'emprunts effectués auprès de banques ou de compagnies inscrites dans le cours normal des affaires;
- b) de l'émission de débentures, billets ou autres titres de créance d'un montant d'au moins 100 000 \$ chacun au nom et pour le compte d'une seule personne, qui n'obligent pas la personne morale à rembourser la somme garantie dans les cinq ans de leur émission et qui ne l'obligent pas à ce faire à la demande du titulaire.

PART II

INCORPORATION AND INSTRUMENT OF INCORPORATION

Incorporation
of a loan
corporation

5. The Lieutenant Governor in Council may incorporate a loan corporation by the issue of letters patent upon the application of any one or more persons.

Application
for
incorporation

6.—(1) An application for the issue of letters patent to incorporate a loan corporation shall follow the prescribed form and shall be filed with the Superintendent together with,

- (a) evidence showing that at least \$5,000,000 of common shares will be subscribed for in good faith at the time the letters patent are issued;
- (b) an application to be registered as a loan corporation; and
- (c) such other information, material and evidence as the form may specify.

Notices,
additional
information

(2) The Superintendent, upon the filing of an application for the issue of letters patent to incorporate a loan corporation,

- (a) shall require notice of the application and notice of the application for registration, containing such information as the Superintendent may require, to be published by the applicant in *The Ontario Gazette* and in a newspaper having general circulation in the locality where the principal place of business is to be located; and
- (b) may require the applicant to provide such information, material and evidence as the Superintendent may consider necessary, in addition to the information, material and evidence required to be provided in or with the application.

Restriction
on issue of
letters
patent

7. Letters patent for the incorporation of a loan corporation shall not be issued unless it is shown to the satisfaction of the Lieutenant Governor in Council that,

- (a) in the locality where the principal place of business of the proposed corporation is to be located, there exists a public benefit and advantage for establishing a loan corporation or an additional loan corporation;

PARTIE II

CONSTITUTION ET ACTE CONSTITUTIF

5 Le lieutenant-gouverneur en conseil peut constituer une compagnie de prêt par la délivrance de lettres patentes à la demande d'une ou de plusieurs personnes.

Constitution
d'une compa-
gnie de prêt

6 (1) La demande de délivrance de lettres patentes aux fins de constituer une compagnie de prêt est rédigée selon la formule prescrite, déposée auprès du surintendant et accompagnée :

Demande de
constitution

- a) d'une preuve que des actions ordinaires seront souscrites de bonne foi, lors de la délivrance des lettres patentes, pour un montant d'au moins 5 000 000 \$;
- b) d'une demande d'inscription à titre de compagnie de prêt;
- c) des autres renseignements, documents et pièces justificatives précisés dans la formule.

(2) Lors du dépôt d'une demande de délivrance de lettres patentes aux fins de constituer une compagnie de prêt, le surintendant :

Avis, rensei-
gnements sup-
plémentaires

- a) doit exiger que l'auteur de la demande publie dans la *Gazette de l'Ontario* et dans un journal généralement lu à l'endroit où sera situé l'établissement principal de la compagnie, un avis de la demande, ainsi qu'un avis de la demande d'inscription qui reproduit tous les renseignements que le surintendant précise;
- b) peut exiger que l'auteur de la demande fournisse, outre ceux qui doivent accompagner la demande ou y figurer, les renseignements, documents et pièces justificatives qu'il juge nécessaires.

7 Il ne peut être délivré de lettres patentes pour la constitution d'une compagnie de prêt, à moins qu'il ne soit démontré à la satisfaction du lieutenant-gouverneur en conseil que les conditions suivantes sont réunies :

Restrictions
portant sur la
délivrance de
lettres paten-
tes

- a) qu'il est avantageux pour le public de l'endroit où doit être situé l'établissement principal de la compagnie projetée, d'établir une première ou une nouvelle compagnie de prêt;

- (b) the proposed management is fit, both as to character and as to competence, to manage a loan corporation;
- (c) each person subscribing for 10 per cent or more of any class of shares of the proposed corporation can demonstrate the adequacy of their financial resources;
- (d) each proposed director is fit, both as to character and as to competence, to be a director of a loan corporation;
- (e) the proposed plan of operations is feasible; and
- (f) the proposed corporation intends to offer to the public, initially or within a reasonable time after incorporation, the services set out in the application for incorporation.

Contents of
letters patent

8. The letters patent of a loan corporation shall set out,

- (a) the name of the corporation;
- (b) the municipality or geographic township in Ontario where the principal place of business is to be located;
- (c) the classes and any maximum number of shares that the corporation is authorized to issue and the rights, privileges, restrictions and conditions attaching to each class of shares; and
- (d) the full name, address of residence, citizenship and occupation of,
 - (i) each of the directors of the corporation,
 - (ii) every person who subscribed for 10 per cent or more of any class of shares of the corporation, and
 - (iii) each of the applicants.

Day of
incorporation

9. A provincial loan corporation comes into existence on the day set out in its letters patent.

Supple-
mentary
letters
patent

10.—(1) On the application of a provincial corporation, the Lieutenant Governor in Council may issue supplementary letters patent to amend the instrument of incorporation of the corporation,

- b) que les membres proposés pour assumer la direction de la compagnie projetée sont aptes, du point de vue de la moralité et de la compétence, à gérer une compagnie de prêt;
- c) que chacune des personnes qui souscrit 10 pour cent ou plus des actions d'une catégorie de la compagnie projetée est en mesure d'établir sa solvabilité;
- d) que chacun des futurs administrateurs est apte, du point de vue de la moralité et de la compétence, à remplir cette fonction auprès d'une compagnie de prêt;
- e) que le programme d'exploitation projeté est réalisable;
- f) que la compagnie projetée se propose d'offrir au public dès sa constitution ou dans un délai raisonnable par la suite, les services énoncés dans la demande de constitution.

8 Les lettres patentes d'une compagnie de prêt énoncent :

Teneur des
lettres paten-
tes

- a) sa dénomination sociale;
- b) la municipalité ou le canton en Ontario où sera situé son établissement principal;
- c) les catégories et le nombre maximal d'actions que la compagnie est autorisée à émettre ainsi que les droits, privilèges, restrictions et conditions rattachés à chaque catégorie;
- d) les nom et prénoms au complet, l'adresse personnelle, la citoyenneté ainsi que la profession de :
 - (i) chacun des administrateurs de la compagnie,
 - (ii) chaque personne qui a souscrit 10 pour cent ou plus des actions d'une catégorie,
 - (iii) chacun des auteurs de la demande.

9 La compagnie de prêt provinciale prend naissance à la date indiquée dans ses lettres patentes.

Date de cons-
titution

10 (1) Le lieutenant-gouverneur en conseil peut, à la demande d'une compagnie provinciale, délivrer des lettres patentes supplémentaires aux fins d'apporter à l'acte constitutif de la compagnie les modifications suivantes :

Lettres paten-
tes supplé-
mentaires

- (a) to change its name;
- (b) in the case of a provincial loan corporation, to continue it as a trust corporation;
- (c) in the case of a provincial trust corporation, to continue it as a loan corporation; or
- (d) to change the principal place of business of a corporation.

Idem

(2) On the application of the corporations involved, the Lieutenant Governor in Council may issue letters patent to amalgamate the corporations and continue them as one provincial corporation.

Idem

(3) On the application of any provincial corporation, the Lieutenant Governor in Council may issue supplementary letters patent to amend the instrument of incorporation of the corporation to,

- (a) add, change or remove any maximum number of shares that the corporation is authorized to issue;
- (b) create new classes of shares;
- (c) change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued;
- (d) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;
- (e) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;
- (f) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;
- (g) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series; and

- a) le changement de sa dénomination sociale;
- b) s'il s'agit d'une compagnie de prêt provinciale, sa prorogation en tant que compagnie de fiducie;
- c) s'il s'agit d'une compagnie de fiducie provinciale, sa prorogation en tant que compagnie de prêt;
- d) le transfert de son établissement principal.

(2) À la demande des compagnies intéressées, le lieutenant-gouverneur en conseil peut délivrer des lettres patentes aux fins de la fusion de ces compagnies et de leur prorogation comme une seule compagnie provinciale. Idem

(3) À la demande d'une compagnie provinciale, le lieutenant-gouverneur en conseil peut délivrer des lettres patentes supplémentaires aux fins d'apporter à l'acte constitutif de la compagnie les modifications suivantes : Idem

- a) ajouter, modifier ou supprimer un nombre maximal d'actions que la compagnie est autorisée à émettre;
- b) créer de nouvelles catégories d'actions;
- c) changer la désignation de la totalité ou d'une partie de ses actions et ajouter, modifier ou supprimer tous droits, privilèges, restrictions et conditions, y compris le droit à des dividendes accumulés, concernant la totalité ou une partie de ses actions, émises ou non;
- d) changer le nombre d'actions, émises ou non, d'une catégorie ou d'une série ou les changer de catégorie ou de série;
- e) diviser en séries une catégorie d'actions, émises ou non, en indiquant le nombre d'actions par série, ainsi que les droits, privilèges, restrictions ou conditions qui s'y rattachent;
- f) autoriser les administrateurs à diviser en séries une catégorie d'actions non émises, en indiquant le nombre d'actions par série, ainsi que les droits, privilèges, restrictions et conditions qui s'y rattachent;
- g) autoriser les administrateurs à modifier les droits, privilèges, restrictions et conditions rattachés aux actions non émises d'une série;

- (h) revoke, diminish or enlarge any authority conferred under clauses (f) and (g).

Special
resolution

- (4) No application shall be made under subsection (1) or (3) unless it has been authorized by a special resolution of the provincial corporation.

Application

- (5) An application for the issue of supplementary letters patent shall follow the prescribed form and shall be filed with the Superintendent together with such information, material and evidence as the form may specify and, in the case of an application under clause (1) (b), evidence that,

- (a) the stated capital account or accounts of the corporation is or are equal to or exceed \$10,000,000 and the capital base of the corporation equals or exceeds \$10,000,000; or
- (b) one or more responsible applicants has subscribed in good faith for shares of the corporation so that, when issued and added to the stated capital account or accounts, the stated capital account or accounts will equal or exceed \$10,000,000 and the capital base will equal or exceed \$10,000,000.

Idem

- (6) An application for the issue of supplementary letters patent under clause (1) (b) or (c) shall be accompanied by an application for registration as a trust corporation or loan corporation, as the case may be.

Notice,
additional
information

- (7) The Superintendent, upon the filing of an application for supplementary letters patent,

- (a) may require notice of the application, containing such information as the Superintendent may require, to be published by the applicant in *The Ontario Gazette*, and in a newspaper having general circulation in the locality where the principal place of business in Ontario of the corporation is located; and
- (b) may require the applicant to provide such information, material and evidence as the Superintendent may consider necessary, in addition to the information, material and evidence required to be provided in or with the application.

Rejection of
application

- (8) Supplementary letters patent shall not be issued,

- (a) to continue a provincial loan corporation as a provincial trust corporation unless it is shown to the

- h) révoquer ou modifier les autorisations données aux termes des alinéas f) et g).

(4) Aucune demande ne peut être présentée en vertu des paragraphes (1) ou (3) à moins d'avoir été autorisée par résolution spéciale de la compagnie provinciale. Résolution spéciale

(5) La demande de délivrance de lettres patentes supplémentaires est rédigée selon la formule prescrite et est déposée auprès du surintendant, accompagnée des renseignements, documents et pièces justificatives qui sont précisés dans la formule, et dans le cas de la demande aux termes de l'alinéa (1) b), de la preuve que l'une des conditions suivantes est remplie : Demande

- a) le compte capital déclaré, ou le total de ces comptes, et l'apport en capital, atteignent ou dépassent chacun 10 000 000 \$;
- b) l'un ou plusieurs des auteurs de la demande, dignes de confiance, ont de bonne foi souscrit des actions de la compagnie de sorte que le montant émis, ajouté à la fois au compte ou aux comptes capital déclaré et à l'apport en capital, donnera un produit qui atteint ou dépasse 10 000 000 \$ dans chaque cas.

(6) La demande de délivrance de lettres patentes supplémentaires aux termes des alinéas (1) b) ou c) est accompagnée d'une demande d'inscription en tant que compagnie de fiducie ou compagnie de prêt, selon le cas. Idem

(7) Lors du dépôt d'une demande de lettres patentes supplémentaires, le surintendant : Avis, renseignements supplémentaires

- a) peut exiger que l'auteur de la demande publie dans la *Gazette de l'Ontario* et dans un journal généralement lu à l'endroit où est situé l'établissement principal de la compagnie, un avis qui reproduit les renseignements que précise le surintendant;
- b) peut exiger que l'auteur de la demande fournisse; outre ceux qui doivent accompagner la demande ou y figurer, les renseignements, documents et pièces justificatives qu'il juge nécessaires.

(8) Des lettres patentes supplémentaires ne sont pas délivrées aux fins : Rejet de la demande

- a) de proroger une compagnie de prêt provinciale en compagnie de fiducie provinciale, à moins qu'il ne

satisfaction of the Lieutenant Governor in Council that,

- (i) in the locality where the principal place of business of the corporation is to be located there exists a public benefit and advantage for the trust corporation or for an additional trust corporation,
 - (ii) the management of the applicant is fit, both as to character and as to competence, to manage a trust corporation,
 - (iii) each person subscribing for 10 per cent or more of any class of shares of the corporation or who holds, or upon the issue of the supplementary letters patent will hold, 10 per cent or more of any class of its shares can demonstrate the adequacy of their financial resources,
 - (iv) each director of the applicant is fit, both as to character and as to competence, to be a director of a trust corporation,
 - (v) the proposed plan of operations as a trust corporation is feasible, and
 - (vi) the corporation intends to offer to the public, initially or within a reasonable time after incorporation, the services set out in the application for supplementary letters patent;
- (b) to continue a provincial trust corporation as a provincial loan corporation unless it is shown to the satisfaction of the Lieutenant Governor in Council that arrangements have been made to transfer to another registered trust corporation the business in relation to which the provincial trust corporation acted as a fiduciary and such arrangements are adequate to protect the persons in relation to which the provincial trust corporation acted in a fiduciary capacity;
- (c) to change the principal place of business of a provincial corporation unless it is shown to the satisfaction of the Lieutenant Governor in Council that in the locality where the proposed principal place of

soit démontré à la satisfaction du lieutenant-gouverneur en conseil que les conditions suivantes sont réunies :

- (i) qu'il est avantageux pour le public de l'endroit où doit être situé l'établissement principal de la compagnie, d'établir une première ou une nouvelle compagnie de fiducie,
 - (ii) que les membres de la direction de l'auteur de la demande sont aptes, du point de vue de la moralité et de la compétence, à gérer une compagnie de fiducie,
 - (iii) que chaque personne qui souscrit 10 pour cent ou plus des actions d'une catégorie, ou qui détient ou, lors de la délivrance des lettres patentes supplémentaires, détiendra 10 pour cent ou plus des actions d'une catégorie, est en mesure d'établir sa solvabilité,
 - (iv) que chacun des administrateurs de l'auteur de la demande est apte, du point de vue de la moralité et de la compétence, à remplir cette fonction auprès d'une compagnie de fiducie,
 - (v) que le programme d'exploitation de la compagnie en tant que compagnie de fiducie est réalisable,
 - (vi) que la compagnie se propose d'offrir au public, dès sa constitution ou dans un délai raisonnable par la suite, les services énoncés dans la demande de lettres patentes supplémentaires;
- b) de proroger une compagnie de fiducie provinciale en compagnie de prêt provinciale, à moins qu'il ne soit démontré à la satisfaction du lieutenant-gouverneur en conseil que les arrangements qui ont été pris afin de céder les activités qu'elle exerce en qualité de fiduciaire à une autre compagnie de fiducie inscrite suffisent à assurer la protection des personnes qu'elle représentait en cette qualité;
- c) de transférer l'établissement principal d'une compagnie provinciale, à moins qu'il ne soit démontré à la satisfaction du lieutenant-gouverneur en conseil que son implantation à l'endroit projeté est avantageux

business is to be located there exists a public benefit and advantage for locating the principal place of business in the proposed location and the proposed plan of operations in the new location is feasible.

Deposits (9) Clause (8) (b) does not apply so as to require a trust corporation that has applied to be continued as a loan corporation to transfer money received by it as deposits.

Idem (10) Where supplementary letters patent have been issued to continue a loan corporation as a trust corporation,

- (a) deposits received by the loan corporation under clause 153 (1) (a) shall be deemed to be deposits received under clause 153 (2) (a); and
- (b) deposits received by the loan corporation under clause 153 (1) (b) shall be deemed to be deposits received under clause 153 (2) (b).

Idem (11) Where supplementary letters patent have been issued to continue a trust corporation as a loan corporation,

- (a) deposits received by the trust corporation under clause 153 (2) (a) shall be deemed to be deposits received under clause 153 (1) (a); and
- (b) deposits received by the trust corporation under clause 153 (2) (b) shall be deemed to be deposits received under clause 153 (1) (b).

Names **11.**—(1) Subject to subsection (2), letters patent or supplementary letters patent shall not be issued to a corporation that has a name,

- (a) that contains a word or expression prohibited by this Act or the regulations or does not contain a word or expression required by this Act or the regulations or that in any other manner does not comply with this Act or the regulations;
- (b) that is the same or similar to,
 - (i) the name of a known,
 - (A) body corporate,
 - (B) trust,

pour le public de cet endroit et que son programme d'exploitation y est réalisable.

(9) L'alinéa (8) b) n'a pas pour effet d'obliger une compagnie de fiducie qui demande sa prorogation en compagnie de prêt à effectuer le transfert des sommes d'argent qu'elle a reçues à titre de dépôts. Dépôts

(10) Lorsque des lettres patentes supplémentaires ont été délivrées aux fins de proroger une compagnie de prêt en une compagnie de fiducie : Idem

- a) les dépôts reçus par la compagnie de prêt en vertu de l'alinéa 153 (1) a) sont réputés reçus en vertu de l'alinéa 153 (2) a);
- b) les dépôts reçus par la compagnie de prêt en vertu de l'alinéa 153 (1) b) sont réputés reçus en vertu de l'alinéa 153 (2) b).

(11) Lorsque des lettres patentes supplémentaires ont été délivrées aux fins de proroger une compagnie de fiducie en compagnie de prêt : Idem

- a) les dépôts reçus par la compagnie de fiducie en vertu de l'alinéa 153 (2) a) sont réputés reçus en vertu de l'alinéa 153 (1) a);
- b) les dépôts reçus par la compagnie de fiducie en vertu de l'alinéa 153 (2) b) sont réputés reçus en vertu de l'alinéa 153 (1) b).

11 (1) Sous réserve du paragraphe (2), il ne peut être délivré de lettres patentes ou de lettres patentes supplémentaires à la compagnie dont la dénomination sociale : Dénominations sociales

- a) reproduit un mot ou une expression prohibés par la présente loi ou les règlements, ne les reproduit pas alors qu'ils sont requis ou qui pour un autre motif n'est pas conforme à la présente loi ou aux règlements;
- b) est identique ou semblable :
 - (i) à la dénomination sociale ou au nom :
 - (A) d'une personne morale,
 - (B) d'une fiducie,

(C) association,

(D) partnership,

(E) sole proprietorship, or

(F) individual,

whether in existence or not, or

- (ii) the known name under which any body corporate, trust, association, partnership, sole proprietorship or individual carries on business or identifies itself,

if the use of that name would be likely to deceive; or

- (c) that in the case of a trust corporation does not include,

- (i) “trust” or “fiducie” together with a designation such as “corporation”, “company”, “compagnie”, “limited” or “société”, or

- (ii) “trustco”.

Idem

(2) Notwithstanding clause (1) (b), a corporation may have a name described in subclause (1) (b) (i) or (ii) upon complying with such conditions as may be prescribed.

Bilingual
names

(3) Subject to this Act and the regulations, a corporation may have a name in an English form, a French form, an English form and a French form or a combined English and French form and it may be legally designated by any such name.

Change of
name if
objectionable

(4) Where, through inadvertence or otherwise, a provincial corporation has obtained a name contrary to this section, the Lieutenant Governor in Council, on the recommendation of the Superintendent, may issue supplementary letters patent changing the name of the corporation to a name specified in the supplementary letters patent.

(C) d'une association,

(D) d'une société en nom collectif,

(E) d'une entreprise à propriétaire unique,

(F) d'un particulier,

qui est connu, qu'il existe ou non,

- (ii) à la dénomination sociale ou au nom connus sous lesquels une personne morale, une fiducie, une association, une société en nom collectif, une entreprise à propriétaire unique ou un particulier s'identifie ou exerce ses activités commerciales,

si l'emploi de la dénomination sociale ou du nom peut s'avérer trompeur;

- c) dans le cas d'une compagnie de fiducie, ne reproduit pas les mots :

- (i) soit «trust» ou «fiducie», ainsi qu'une désignation telle que «corporation», «company», «compagnie», «limited» ou «société»,

- (ii) soit «trustco».

(2) Malgré l'alinéa (1) b), la compagnie qui s'est conformée aux conditions prescrites peut porter la dénomination sociale énoncée au sous-alinéa (1) b) (i) ou (ii). Idem

(3) Sous réserve de la présente loi et des règlements, la compagnie peut avoir une dénomination sociale anglaise, une dénomination sociale française, une dénomination sociale dans chacune de ces deux langues ou une dénomination sociale qui présente une combinaison des deux langues. La compagnie peut être légalement désignée par n'importe laquelle de ses dénominations sociales. Dénominations sociales bilingues

(4) Le lieutenant-gouverneur en conseil peut, sur la recommandation du surintendant, délivrer à la compagnie provinciale qui, par mégarde ou autrement, s'est vu attribuer une dénomination sociale non conforme aux dispositions du présent article, des lettres patentes supplémentaires modifiant sa dénomination sociale pour y substituer celle qui figure aux lettres patentes supplémentaires. Modification d'une dénomination sociale contestable

Hearing (5) Before making a recommendation under subsection (4), the Superintendent shall give the corporation an opportunity to be heard by him or her.

Decision is final **12.**—(1) The decision of the Lieutenant Governor in Council to approve or reject an application for letters patent or supplementary letters patent, for an order of revival or for consent under section 144 is final and not subject to appeal, but nothing in this subsection prevents an applicant from making a new application.

Notice (2) Where the Lieutenant Governor in Council approves or rejects an application for letters patent or supplementary letters patent, for an order of revival or for consent under section 144, the Superintendent shall forthwith notify the applicant in writing.

Powers of corporation **13.** Subject to this Act and any terms, conditions and restrictions imposed on its registration, a provincial corporation,

(a) has the capacity and the rights, powers and privileges of a natural person; and

(b) has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Ontario to the extent that the laws of such jurisdiction permit.

PART III

WINDING UP, DISSOLUTION AND MERGER

Winding up
R.S.O. 1980,
c. 95 **14.** Except where Part VI of the *Corporations Act* is inconsistent with this Act, that Part applies to the winding up of a provincial corporation, substituting the word “Superintendent” for the word “Minister”.

Cancellation
for non-use **15.**—(1) Where a provincial corporation fails to go into *bona fide* operation within two years of the date of incorporation or having done so it ceases *bona fide* operation for a period of two consecutive years, the Lieutenant Governor in Council, on the recommendation of the Superintendent and upon such terms and conditions as the Lieutenant Governor in Council considers appropriate, may order the cancellation of the instrument of incorporation of the corporation and it is dissolved on the date fixed in the order.

(5) Avant de faire la recommandation visée au paragraphe (4), le surintendant donne à la compagnie l'occasion de se faire entendre. Audience

12 (1) Est définitive et sans appel la décision du lieutenant-gouverneur en conseil d'approuver ou de rejeter une demande de lettres patentes, de lettres patentes supplémentaires, de décret de reconstitution ou une demande de consentement aux termes de l'article 144. Il est toutefois loisible à l'auteur de la demande d'en présenter une nouvelle. Décision définitive

(2) Lorsque le lieutenant-gouverneur en conseil approuve ou rejette la demande de lettres patentes, de lettres patentes supplémentaires, de décret de reconstitution ou la demande de consentement aux termes de l'article 144, le surintendant en informe sans délai par écrit l'auteur de la demande. Avis

13 Sous réserve de la présente loi et des conditions et restrictions rattachées à son inscription, la compagnie provinciale : Pouvoirs de la compagnie

- a) a la capacité, les droits, pouvoirs et privilèges d'une personne physique;
- b) a la capacité d'exploiter son entreprise, de diriger ses affaires et d'exercer ses pouvoirs dans une compétence législative autre que l'Ontario, dans les limites des lois de cette compétence législative.

PARTIE III

LIQUIDATION, DISSOLUTION ET FUSION

14 Sauf dans la mesure où la partie VI de la *Loi sur les compagnies et associations* est incompatible avec les dispositions de la présente loi, cette partie s'applique à la liquidation d'une compagnie provinciale, le mot «surintendant» étant alors substitué au mot «ministre». Liquidation
L.R.O. 1980,
chap. 95

15 (1) Le lieutenant-gouverneur en conseil peut, sur la recommandation du surintendant et aux conditions que le lieutenant-gouverneur en conseil juge pertinentes, ordonner l'annulation de l'acte constitutif de la compagnie provinciale dont l'exploitation effective n'a pas débuté dans les deux ans de sa constitution ou, ayant ainsi débuté, a été interrompue par la suite pendant deux années consécutives. La compagnie est alors dissoute à la date qui figure dans le décret. Annulation
faute d'ex-
ploitation

- Hearing (2) Before making a recommendation under subsection (1), the Superintendent shall give the corporation an opportunity to be heard by him or her.
- Revival (3) Where a provincial corporation has been dissolved under subsection (1), the Lieutenant Governor in Council may revive the corporation by order, upon the application therefor of any interested person.
- Issue (4) Upon the date set out in an order under subsection (3), the corporation, subject to such terms and conditions as may be set out in the order, is revived and, subject to any rights acquired by any person after the dissolution, the corporation is restored to its legal position, including all its property, rights and privileges and franchises, and is subject to all its liabilities, contracts, disabilities and debts, as of the date of its dissolution, in the same manner and to the same extent as if it had not been dissolved.
- Actions after dissolution **16.**—(1) Notwithstanding the dissolution of a provincial corporation under section 15,
- (a) every proceeding commenced in or before any court or tribunal by or against the corporation, its officers or directors before its dissolution may be continued as if the corporation had not been dissolved;
 - (b) a proceeding may be brought in or before any court or tribunal against the corporation, its officers or directors within five years after its dissolution as if the corporation had not been dissolved; and
 - (c) all real or personal property that would have been available to satisfy any judgment or order if the corporation had not been dissolved remains available for such purpose.
- Service after dissolution (2) For the purposes of this section, the service of any process on a provincial corporation after its dissolution shall be deemed to be sufficiently made if it is made upon any person last shown on the public file referred to in section 138 as being a director or officer of the corporation before the dissolution.
- Idem (3) Where any proceeding has been brought against a provincial trust corporation after its dissolution, notice of the commencement of the proceeding, together with the originating process by which the proceeding was commenced, shall be served upon the Public Trustee.

(2) Avant de faire la recommandation visée au paragraphe (1), le surintendant donne à la compagnie l'occasion de se faire entendre. Audience

(3) Le lieutenant-gouverneur en conseil peut, à la demande d'une personne intéressée, prendre un décret de reconstitution de la compagnie provinciale dissoute aux termes du paragraphe (1). Reconstitution

(4) À la date fixée dans le décret pris aux termes du paragraphe (3) et aux conditions qui y sont énoncées, la compagnie est reconstituée. Celle-ci, sous réserve des droits acquis par une autre personne après la dissolution, recouvre son statut juridique premier de même que ses biens, droits, privilèges et concessions et est assujettie de nouveau et dans la même mesure aux obligations, contrats, incapacités et dettes qui existaient lors de la dissolution, comme si celle-ci n'avait pas eu lieu. Délivrance

16 (1) Malgré la dissolution de la compagnie aux termes de l'article 15 : Recours après la dissolution

- a) l'instance introduite devant un tribunal judiciaire ou administratif par la compagnie ou contre elle, ses dirigeants ou ses administrateurs avant sa dissolution peut être poursuivie comme si la dissolution n'avait pas eu lieu;
- b) une instance peut être introduite devant un tribunal judiciaire ou administratif contre la compagnie, ses dirigeants ou ses administrateurs dans les cinq ans qui suivent sa dissolution comme si celle-ci n'avait pas eu lieu;
- c) les biens meubles et immeubles sur lesquels un jugement ou une ordonnance auraient pu être exécutés à défaut de la dissolution peuvent toujours servir à cette fin.

(2) Pour l'application du présent article, la signification à la compagnie provinciale de tout acte de procédure après la dissolution est réputée régulière, si elle est faite à l'un des administrateurs ou des dirigeants inscrit comme tel au dossier public visé à l'article 138 immédiatement avant la dissolution. Signification après la dissolution

(3) Doivent être signifiés au Curateur public l'acte introductif ainsi que l'avis qui l'accompagne, dans le cas où une instance est introduite après la dissolution de la compagnie provinciale. Idem

Liability of
shareholders
to creditors

17.—(1) Notwithstanding the dissolution of a provincial corporation under section 15, each shareholder to whom any of its property has been distributed is liable to any person claiming under section 16 to the extent of the amount received by that shareholder upon the distribution, and a proceeding to enforce such liability may be commenced within five years after the date of the dissolution of the corporation.

Idem

(2) The court hearing an action referred to in subsection (1) may order the action to be brought against the persons who were shareholders as a class, subject to such conditions as the court thinks fit and, if the plaintiff establishes a claim, the court may refer the proceedings to a referee or other officer of the court.

Idem

(3) Where a reference is made under subsection (2), the referee or other officer may,

- (a) add as a party to the proceedings before him or her each person who was a shareholder found by the plaintiff;
- (b) determine, subject to subsection (1), the amount that each person who was a shareholder shall contribute towards satisfaction of the plaintiff's claim; and
- (c) direct payment of the amounts so determined.

Definition

(4) In this section, "shareholder" includes the heirs and personal representatives of a shareholder.

Forfeiture of
undisposed
property

18.—(1) All property of a provincial corporation that has not been disposed of at the date of its dissolution whether under this or any other Act is forfeit to the Crown.

Trust
property

(2) All property that immediately before the dissolution of a provincial trust corporation was being held in trust by it shall be delivered forthwith by the persons who were its officers and directors before its dissolution to the Public Trustee.

Idem

(3) Where property is not delivered as required by subsection (2), the Public Trustee may do such things as may be necessary to obtain the property.

Idem

(4) All property received by the Public Trustee under subsections (2) and (3) shall be held in trust by the Public Trustee for the beneficiaries of the trusts.

17 (1) Malgré la dissolution de la compagnie provinciale aux termes de l'article 15, les actionnaires entre lesquels ont été répartis les biens de la compagnie engagent leur responsabilité, jusqu'à concurrence de la somme reçue, envers la personne qui invoque l'article 16. L'instance en recouvrement peut être introduite dans les cinq ans qui suivent la dissolution.

Responsabilité
des actionnaires
envers les
créanciers

(2) Le tribunal qui entend l'instance visée au paragraphe (1) peut ordonner qu'elle soit dirigée contre les actionnaires en tant que groupe, sous réserve des conditions qu'il juge pertinentes. Si le demandeur établit le bien-fondé de sa demande, le tribunal peut renvoyer la question à un arbitre ou autre officier de justice.

Idem

(3) Dans le cas du renvoi visé au paragraphe (2), l'arbitre ou l'autre officier de justice peut :

Idem

- a) joindre comme partie à l'instance chaque personne qui est un ancien actionnaire reconnu à ce titre par le demandeur;
- b) déterminer, sous réserve du paragraphe (1), la part que chaque ancien actionnaire doit verser pour indemniser le demandeur;
- c) ordonner le versement des sommes déterminées.

(4) Dans le présent article, «actionnaire», s'entend en outre de l'héritier et de l'ayant droit.

Définition
«shareholder»

18 (1) Sont dévolus à la Couronne les biens de la compagnie provinciale qui n'ont pas été aliénés lors de sa dissolution en vertu de la présente loi ou d'une autre loi.

Dévolution

(2) Les personnes qui étaient les dirigeants et administrateurs de la compagnie de fiducie provinciale lors de sa dissolution remettent sans délai au Curateur public les biens détenus en fiducie par celle-ci immédiatement avant la dissolution.

Biens en
fiducie

(3) Le Curateur public peut prendre les mesures nécessaires aux fins de se faire livrer les biens qui n'ont pas été remis conformément au paragraphe (2).

Idem

(4) Le Curateur public détient en fiducie, pour le compte de leurs titulaires, les biens qu'il reçoit aux termes des paragraphes (2) et (3).

Idem

Property
available to
satisfy order
of court or
tribunal

(5) Where an order is made in a proceeding referred to in section 16 and the order affects property forfeited to the Crown under subsection (1), the property shall be available to satisfy the order.

Amalga-
mation

19.—(1) Two or more corporations, of which at least one is a provincial corporation, may amalgamate and continue as one provincial corporation or, subject to the law of the receiving jurisdiction, as one extra-provincial corporation.

Asset sale

(2) A provincial corporation may sell all of its assets to any corporation incorporated under the laws of Canada or of a province or territory of Canada if the purchasing corporation assumes all of the liabilities of the provincial corporation.

Asset
purchase

(3) A provincial corporation may purchase all of the assets of any corporation incorporated under the laws of Canada or of a province or territory of Canada if the provincial corporation assumes all of the liabilities of the vendor corporation.

Proviso re:
amalgamation

(4) Subsection (1) does not apply to an extra-provincial corporation unless under the law of the jurisdiction in which it is incorporated it has the power to amalgamate with a provincial corporation.

Compulsory
acquisitions
1982, c. 4

(5) Part XV of the *Business Corporations Act, 1982* applies with necessary modifications with respect to every provincial corporation as if it were a corporation incorporated under that Act.

Mandatory
agreement

20.—(1) Where corporations propose to amalgamate or purchase or sell assets under section 19, each such corporation shall enter into an agreement setting out the terms and means of effecting the amalgamation or purchase and sale.

When
agreement
effective

(2) No agreement for the amalgamation of corporations or the purchase or sale of the assets of a corporation shall take effect until all approvals required by this Part have been given.

Contents of
agreement,
amalgamation

(3) Where corporations propose to amalgamate the agreement referred to in subsection (1) shall set out,

- (a) the proposed name of the amalgamated corporation;

(5) Les biens dévolus à la Couronne en vertu du paragraphe (1) et sur lesquels porte l'ordonnance rendue lors de l'instance visée à l'article 16 peuvent servir à l'exécution de cette ordonnance.

Les biens peuvent servir à l'exécution de l'ordonnance

19 (1) Plusieurs compagnies, dont l'une au moins est une compagnie provinciale, peuvent fusionner en une seule compagnie provinciale ou, sous réserve des lois de la compétence législative d'accueil, en une seule compagnie extraprovinciale, et être ainsi prorogées.

Fusion

(2) Une compagnie provinciale peut vendre tous ses éléments d'actif à une compagnie constituée en vertu des lois du Canada ou d'une province ou d'un territoire du Canada, à condition que la compagnie acheteuse en assume tout le passif.

Vente des éléments d'actif

(3) Une compagnie provinciale peut acheter tous les éléments d'actif d'une compagnie constituée en vertu des lois du Canada ou d'une province ou d'un territoire du Canada, à condition d'en assumer tout le passif.

Acquisition des éléments d'actif

(4) Le paragraphe (1) ne s'applique pas à la compagnie extraprovinciale, à moins que sa fusion avec une compagnie provinciale ne soit autorisée par les lois de son territoire de constitution.

Réserve dans le cas de fusion

(5) La partie XV de la *Loi de 1982 sur les compagnies* s'applique avec les adaptations nécessaires à la compagnie provinciale, comme s'il s'agissait d'une compagnie constituée aux termes de cette loi.

Acquisitions forcées
1982, chap. 4

20 (1) Chacune des compagnies qui se proposent de fusionner, d'acheter ou de vendre des éléments d'actif aux termes de l'article 19, conclut une convention qui énonce les modalités soit de la fusion, soit de l'achat et de la vente.

Convention obligatoire

(2) Aucune convention, soit de fusion de compagnies, soit d'achat ou de vente des éléments d'actif d'une compagnie, n'a d'effet avant d'avoir reçu toutes les approbations préalables exigées par la présente partie.

Prise d'effet de la convention

(3) La convention visée au paragraphe (1) conclue par les compagnies qui se proposent de fusionner énonce :

Teneur de la convention de fusion

- a) la dénomination sociale projetée de la compagnie issue de la fusion;
- b) la municipalité ou le canton en Ontario ainsi que l'adresse, y compris le numéro du bâtiment et le nom de la rue, le cas échéant, où sera situé l'établissement principal de la compagnie issue de la fusion;

- (b) the municipality or geographic township in Ontario and the address, including street name and number, if any, where the principal place of business of the amalgamated corporation is to be located;
- (c) the classes of shares that the amalgamated corporation may issue and the rights and privileges, restrictions and conditions attaching to each class of share;
- (d) the full name, address of residence, citizenship and occupation,
 - (i) of each of the first directors of the amalgamated corporation,
 - (ii) of every person who will hold immediately upon the amalgamation 10 per cent or more of any class of the shares of the amalgamated corporation;
- (e) the manner of converting the shares of the amalgamating corporations into shares of the amalgamated corporation; and
- (f) the proposed effective date of the amalgamation.

Submission
of agreement

(4) An agreement to amalgamate corporations or to purchase or sell the assets of a corporation to another corporation shall be submitted to the shareholders of each corporation holding voting shares for their approval at a meeting thereof to be held separately for the purpose of taking the agreement into consideration.

Submission
of offer

(5) Where an offer has been made to a corporation with respect to the purchase of all of its assets and no agreement is reached, the offer, at the request of the corporation making the offer, shall be submitted to the shareholders of each corporation for their approval at a meeting thereof to be held separately for the purpose of taking the offer into consideration.

Notice of
meeting

(6) Each corporation required by subsection (4) or (5) to hold a meeting shall deliver notice of the meeting and a copy of the agreement or offer to the Superintendent at least twenty-one days before the meeting.

- c) les catégories d'actions que la compagnie issue de la fusion est autorisée à émettre, ainsi que les droits, privilèges, restrictions et conditions rattachés à chaque catégorie;
- d) les nom et prénoms au complet, l'adresse personnelle, la citoyenneté ainsi que la profession :
 - (i) de chacun des premiers administrateurs de la compagnie issue de la fusion,
 - (ii) de chaque personne qui, dès la fusion, détendra 10 pour cent ou plus des actions d'une catégorie de la compagnie issue de la fusion;
- e) le mode de conversion des actions des compagnies qui fusionnent en actions de la compagnie issue de la fusion;
- f) la date de prise d'effet de la fusion.

(4) La convention, soit de fusion des compagnies, soit d'achat ou de vente des éléments d'actif d'une compagnie en faveur d'une autre, est soumise à l'approbation des actionnaires détenteurs d'actions assorties du droit de vote de chacune des compagnies, lors d'assemblées tenues séparément dans le but d'examiner la convention.

Présentation
de la conven-
tion

(5) Si l'offre d'achat de la totalité de ses éléments d'actif présentée à une compagnie ne fait l'objet d'aucune entente, cette offre, à la demande de la compagnie qui en est l'auteur, est soumise à l'approbation des actionnaires de chacune des compagnies lors d'assemblées tenues séparément dans le but d'examiner l'offre.

Présentation
de l'offre

(6) Au moins vingt et un jours avant la tenue de l'assemblée obligatoire visée aux paragraphes (4) ou (5), chaque compagnie tenue de convoquer cette assemblée fait parvenir au surintendant un avis de convocation de l'assemblée ainsi qu'un exemplaire de la convention ou de l'offre.

Avis de
l'assemblée

Proceedings
to approve
agreement

21. At each of the meetings required by subsection 20 (4) or (5), the agreement or offer shall be considered, and if at each meeting the holders of at least 50 per cent of the issued voting shares of the corporation are present in person or represented by proxy and the agreement or offer is approved by resolution carried by the affirmative vote of the holders of at least three-fourths of the shares represented at such meeting, that fact shall be certified upon the agreement or offer by the secretary of each corporation.

Dispensing
with approval

22.—(1) The Lieutenant Governor in Council, in the case of a proposed purchase of assets, may dispense with the approval of the agreement or offer by the shareholders of the purchasing corporation if the Lieutenant Governor in Council is satisfied that the shareholders, after due notice thereof, have approved a general resolution or by-law authorizing the purchase of the assets of any corporation upon the basis and within the limits specified in such agreement or offer.

When offer
becomes
agreement

(2) An offer to which subsection 20 (5) applies shall be deemed for all purposes to be an agreement when it has been certified by the secretary of the vendor corporation under section 21 and either it has been certified by the secretary of the purchasing corporation as required by that section or the approval of the offer by the shareholders of the purchasing corporation has been dispensed with under subsection (1).

Submission
to
Lieutenant
Governor in
Council

23.—(1) If the agreement is approved and certified in accordance with section 21 by each of the corporations or, in the case provided for in section 22, by the shareholders of the vendor corporation, the agreement, with the certificates or certificate thereon, shall be filed with the Superintendent and the Superintendent shall submit the agreement to the Lieutenant Governor in Council for approval.

Idem

(2) In the case of an amalgamation, an agreement filed under subsection (1) shall be accompanied by an application for initial registration under subsection 31 (1) for the amalgamated corporation and, if the amalgamated corporation will be a provincial corporation, by an application for supplementary letters patent.

Notice,
information

(3) The Superintendent, upon the filing of an agreement and before submitting the agreement to the Lieutenant Governor in Council,

- (a) shall require notice of the agreement, containing such information as the Superintendent may require, to be published by the parties to the agreement in *The Ontario Gazette*, and in a newspaper

21 La convention ou l'offre est examinée lors de chacune des assemblées dont les paragraphes 20 (4) ou (5) exigent la tenue. Si, à chacune de ces assemblées, les détenteurs d'au moins 50 pour cent des actions émises et assorties du droit de vote de la compagnie assistent en personne ou par fondé de pouvoir et que la convention ou l'offre est approuvée par résolution adoptée par le vote affirmatif des détenteurs d'au moins les trois quarts des actions qui y sont représentées, le secrétaire de chacune des compagnies atteste ce fait sur la convention ou l'offre.

Procédure
d'approbation
de la conven-
tion

22 (1) Dans le cas d'un achat projeté d'éléments d'actif, le lieutenant-gouverneur en conseil peut dispenser la compagnie acheteuse de solliciter l'approbation de ses actionnaires s'il est convaincu que ces derniers, dûment avisés à cet effet, ont adopté une résolution générale ou un règlement intérieur autorisant l'achat des éléments d'actif d'une compagnie selon les modalités et dans les limites précisées dans la convention ou dans l'offre.

Dispense
d'approbation

(2) L'offre visée au paragraphe 20 (5) est réputée une convention lorsqu'elle a été attestée aux termes de l'article 21 par le secrétaire de la compagnie venderesse et, à moins que la compagnie acheteuse n'ait été dispensée de solliciter l'approbation de ses actionnaires en vertu du paragraphe (1), également attestée par le secrétaire de cette dernière.

Offre trans-
formée en
convention

23 (1) La convention qui a reçu l'approbation et l'attestation de chacune des compagnies conformément à l'article 21 ou, dans le cas prévu à l'article 22, des actionnaires de la compagnie venderesse, est déposée, pourvue du ou des certificats exigés, auprès du surintendant. Ce dernier la présente au lieutenant-gouverneur en conseil pour son approbation.

Présentation
au lieute-
nant-gouver-
neur en
conseil

(2) Dans le cas de fusion, la convention déposée aux termes du paragraphe (1) est accompagnée d'une demande de première inscription aux termes du paragraphe 31 (1) relative à la compagnie issue de la fusion et, si celle-ci doit être une compagnie provinciale, d'une demande de lettres patentes supplémentaires.

Idem

(3) Lors du dépôt de la convention et avant sa présentation au lieutenant-gouverneur en conseil, le surintendant :

Avis, rensei-
gnements

- a) doit exiger que les parties à la convention publient dans la *Gazette de l'Ontario* et dans un journal généralement lu à l'endroit où est situé le principal établissement de chaque compagnie, l'avis de con-

having general circulation in the locality where the principal place of business of each corporation is located and in the case of an amalgamation, in the locality where the principal place of business of the amalgamated corporation is to be located; and

- (b) may require the parties to the agreement to provide such information, material and evidence as the Superintendent may consider necessary, in addition to the information, material and evidence required to be provided under any other provision of this Act.

Refusal of
approval

(4) The Lieutenant Governor in Council shall refuse approval of the agreement unless it is shown to the satisfaction of the Lieutenant Governor in Council that,

- (a) in the case of an amalgamation,
 - (i) there exists a public benefit and advantage for the amalgamation of the corporations,
 - (ii) the proposed management is fit, both as to character and as to competence, to manage the amalgamated corporation,
 - (iii) each person who will be a holder of 10 per cent or more of any class of shares of the amalgamated corporation immediately after the amalgamation can demonstrate the adequacy of their financial resources,
 - (iv) each proposed first director is fit as to character and as to competence to be a director of the amalgamated corporation,
 - (v) the proposed plan of operations for the amalgamated corporation is feasible, and
 - (vi) the amalgamated corporation intends to offer to the public, initially or within a reasonable time after the amalgamation, the services set out in the amalgamation agreement;
- (b) in the case of a purchase and sale of assets,
 - (i) there exists a public benefit and advantage if the purchase and sale is completed,
 - (ii) the proposed plan of operations for the purchasing corporation upon the closing of the purchase agreement is feasible;

vention qui reproduit tous les renseignements qu'il exige. Dans le cas de fusion, cette publication a également lieu à l'endroit où sera situé l'établissement principal de la compagnie issue de la fusion;

- b) peut exiger que les parties à la convention fournissent les renseignements, documents et pièces qu'il estime nécessaires, outre ceux dont la production est exigée en vertu d'une autre disposition de la présente loi.

(4) Le lieutenant-gouverneur en conseil refuse son approbation à la convention, à moins qu'il ne soit démontré à sa satisfaction :

Refus d'approbation

- a) dans le cas d'une fusion :

- (i) que celle-ci est avantageuse pour le public,
- (ii) que les membres proposés pour en assumer la direction sont aptes, du point de vue de la moralité et de la compétence, à gérer la compagnie issue de la fusion,
- (iii) que chaque personne qui, dès la fusion, détiendra 10 pour cent ou plus des actions d'une catégorie de la compagnie issue de la fusion, est en mesure d'établir sa solvabilité,
- (iv) que chacun des futurs premiers administrateurs est apte, du point de vue de la moralité et de la compétence, à remplir cette fonction auprès de la compagnie issue de la fusion,
- (v) que le programme d'exploitation projeté de la compagnie issue de la fusion est réalisable,
- (vi) que la compagnie issue de la fusion se propose d'offrir au public dès la fusion ou dans un délai raisonnable par la suite, les services énoncés dans la convention de fusion;

- b) dans le cas d'achat et de vente d'éléments d'actif :

- (i) qu'il est avantageux pour le public de parfaire l'achat et la vente,
- (ii) que le programme d'exploitation de la compagnie acheteuse projeté à la suite de la conclusion de la convention d'achat est réalisable;

- (c) in the case where one of the parties to the agreement is a trust corporation and the amalgamated or purchasing corporation is a loan corporation, the arrangements referred to in subsection 29 (2) are adequate to protect the persons in relation to which the trust corporation, before the approval of the agreement, is acting in a fiduciary capacity; and
- (d) where the amalgamated corporation is a loan corporation, the amalgamated corporation immediately after the amalgamation will have a capital base of at least \$5,000,000 or, where the amalgamated corporation is a trust corporation, the amalgamated corporation immediately after the amalgamation will have a capital base of at least \$10,000,000.

Definition

24.—(1) In this section, “Superintendent’s certificate” means a certificate issued under subsection (2).

Superintendent’s
certificate

(2) Where the Lieutenant Governor in Council approves an agreement submitted under subsection 23 (1), the Superintendent shall issue a certificate certifying,

- (a) that the approval of the Lieutenant Governor in Council has been given and the date of the approval;
- (b) in the case of a purchase or sale of assets, the name of each corporation that is a party to the transaction and whether the party is a vendor or a purchaser;
- (c) in the case of an amalgamation, the names of the corporations that are amalgamating, the name of the amalgamated corporation and the date upon which the amalgamation takes effect; and
- (d) such other matters, if any, as in the opinion of the Lieutenant Governor in Council are necessary or desirable in the public interest.

Effect as
evidence

(3) A Superintendent’s certificate is *prima facie* proof of all matters set out therein.

Notice

(4) Notice of the issue of a Superintendent’s certificate shall be published in *The Ontario Gazette* by the Superintendent.

- c) si l'une des parties à la convention est une compagnie de fiducie et que la compagnie issue de la fusion ou la compagnie acheteuse est une compagnie de prêt, les arrangements visés au paragraphe 29 (2) suffisent à assurer la protection des personnes que la compagnie de fiducie représentait en cette qualité avant l'approbation de la convention;
- d) si la compagnie issue de la fusion est une compagnie de prêt, la compagnie issue de la fusion aura, dès la fusion, un apport en capital d'au moins 5 000 000 \$ ou, si la compagnie issue de la fusion est une compagnie de fiducie, un apport en capital d'au moins 10 000 000 \$.

24 (1) Dans le présent article, «certificat du surintendant» s'entend du certificat délivré aux termes du paragraphe (2).

Définition
«Superintendent's
certificate»

(2) Lorsque le lieutenant-gouverneur en conseil a approuvé une convention présentée aux termes du paragraphe 23 (1), le surintendant délivre un certificat qui atteste ce qui suit :

Certificat du
surintendant

- a) l'approbation du lieutenant-gouverneur en conseil ainsi que la date où il l'a donnée;
- b) dans le cas d'achat ou de vente d'éléments d'actif, la dénomination sociale de chacune des parties ainsi que sa qualité de venderesse ou d'acheteuse;
- c) dans le cas de fusion, les dénominations sociales des compagnies qui fusionnent, celle de la compagnie issue de la fusion ainsi que la date de mise à effet de la fusion;
- d) les autres éléments qui, de l'avis du lieutenant-gouverneur en conseil, sont nécessaires ou souhaitables dans l'intérêt public.

(3) Le certificat du surintendant fait foi *prima facie* de son contenu.

Force pro-
bante

(4) Le surintendant publie un avis de délivrance du certificat dans la *Gazette de l'Ontario*.

Avis

Certificate of
Superin-
tendent

(5) Any document signed by or purportedly signed by the Superintendent, certifying the document to be or to contain a true copy of the Superintendent's certificate or of any instrument referred to in the certificate, may be registered in any land registry office upon it being tendered for registration accompanied by the proper fee, if any.

Registration

(6) It is sufficient in order to show the vesting of land or interests in land in the continuing corporation to register a certified copy of the Superintendent's certificate in each land registry office in which instruments affecting land or interests in land, included or intended to be included in the amalgamation or purchase and sale, are registered.

Security
interest
R.S.O. 1980,
c. 375

(7) For the purposes of the *Personal Property Security Act*, it is sufficient, in order to show the vesting in the continuing corporation of any interest in personal property that constitutes a security interest within the meaning of that Act and for which one of the amalgamating corporations is shown as a secured party in any financing statement registered under that Act, for a financing change statement to be registered in respect of the vesting as if the interest had been assigned.

Assets of
vendor
corporation
vest in
purchasing
corporation

25.—(1) In the case of a purchase of the assets of a corporation that has been approved by the Lieutenant Governor in Council, the assets of the vendor corporation become vested in the purchasing corporation on and from the date of the approval without any further conveyance, and the purchasing corporation thereupon becomes and is responsible for the liabilities of the vendor corporation.

Disposal of
assets by
purchasing
corporation

(2) In dealing with the assets of the vendor corporation, it is sufficient for the purchasing corporation to recite the agreement, the approval of the Lieutenant Governor in Council thereto and the date of approval.

Rights of
creditors

26.—(1) A sale of the assets of a corporation does not affect the rights of any creditor of the vendor corporation.

Privity of
contract
between
purchasing
corporation
and each
creditor of
vendor
corporation

(2) An agreement made or purporting to be made under this Act to purchase the assets of a corporation shall be deemed to contain a covenant and agreement with each creditor of the vendor corporation that the purchasing corporation will pay to the creditor the amount of the vendor corporation's indebtedness to the creditor at such time and place as the amount would have been payable had the agreement to purchase not been made.

(5) Le document qui porte ou qui se présente comme portant la signature du surintendant, et qui atteste qu'il constitue ou reproduit une copie certifiée conforme du certificat du surintendant ou de l'acte auquel il est renvoyé dans le certificat, peut être enregistré à tout bureau d'enregistrement immobilier dès sa présentation à cette fin, accompagné des droits exigés, le cas échéant.

Certificat du
surintendant

(6) Aux fins de signaler que des biens-fonds ou des droits fonciers sont acquis à la compagnie prorogée, il suffit d'enregistrer une copie certifiée conforme du certificat du surintendant dans chaque bureau d'enregistrement immobilier où sont enregistrés les actes qui concernent les biens-fonds ou les droits fonciers compris dans la fusion ou l'achat et la vente ou censés en faire partie.

Enregis-
trément

(7) Pour l'application de la *Loi sur les sûretés mobilières*, aux fins de signaler que des droits mobiliers qui constituent des sûretés au sens de cette loi sont acquis à la compagnie prorogée, et que l'une des compagnies qui fusionnent figure en tant que créancier garanti de ces sûretés dans un état de financement enregistré aux termes de cette loi, il suffit d'enregistrer un état de modification du financement comme s'il y avait eu cession de la sûreté.

Sûretés
L.R.O. 1980,
chap. 375

25 (1) Les éléments d'actif de la compagnie venderesse sont acquis à la compagnie acheteuse, sans autre forme de cession, à compter de la date de l'approbation de l'achat par le lieutenant-gouverneur en conseil. La compagnie acheteuse assume alors le passif de la compagnie venderesse.

Éléments
d'actif de la
compagnie
venderesse
acquis à la
compagnie
acheteuse

(2) En négociant les éléments d'actif de la compagnie venderesse, il suffit que la compagnie acheteuse cite la convention, l'approbation du lieutenant-gouverneur en conseil et la date de cette approbation.

Aliénation
des éléments
d'actif par la
compagnie
acheteuse

26 (1) La vente des éléments d'actif de la compagnie venderesse ne porte pas atteinte aux droits de ses créanciers.

Droits des
créanciers

(2) La convention conclue aux termes de la présente loi, ou se présentant comme étant ainsi conclue, en vue de l'achat des éléments d'actif d'une compagnie est réputée assortie d'un pacte accessoire et d'une convention conclus avec chacun des créanciers de la compagnie venderesse en vertu desquels la compagnie acheteuse s'acquittera envers chacun d'eux de la dette de la compagnie venderesse à la date et au lieu auxquels la compagnie venderesse aurait dû acquitter cette dette, n'était cette convention.

Lien de droit
contractuel
entre la com-
pagnie ache-
teuse et
chacun des
créanciers de
la compagnie
venderesse

Dissolution
of vendor
corporation

(3) Where the Lieutenant Governor in Council approves an agreement for the sale of the assets of a corporation, the vendor corporation is, from the date of the approval, dissolved, except so far as is necessary to give full effect to the agreement.

Amalgama-
tion

27.—(1) In the case of an amalgamation,

- (a) if the amalgamated corporation is a provincial corporation, the parties to the amalgamation, from the date set out in the letters patent of amalgamation, shall continue as one provincial corporation under the name stated in the letters patent;
- (b) if the amalgamated corporation is an extra-provincial corporation, every provincial corporation that is a party to the agreement is, from the effective date of the amalgamation under the laws of the jurisdiction under which the continuing corporation is incorporated, amalgamated with the other parties to the agreement and it shall continue with them as one corporation;
- (c) the amalgamated corporation possesses all the property, rights, privileges and franchises and is subject to all liabilities, including civil, criminal and quasi-criminal liabilities, and all contracts, disabilities and debts of each of the amalgamating corporations;
- (d) a conviction against, or ruling, order or judgment in favour of or against an amalgamating corporation may be enforced by or against the amalgamated corporation;
- (e) the letters patent of amalgamation are deemed to be the instrument of incorporation of the amalgamated corporation; and
- (f) the amalgamated corporation shall be deemed to be the party plaintiff or the party defendant, as the case may be, in any civil proceeding commenced by or against an amalgamating corporation before the amalgamation has become effective.

Continuation
in another
jurisdiction

(2) Where the amalgamating corporations are to continue as one extra-provincial corporation and one or more, but not all, parties to the amalgamation agreement are provincial corporations, the parties to the amalgamation agreement may apply to the proper officer of the jurisdiction specified in the

(3) La compagnie venderesse dont le lieutenant-gouverneur en conseil a approuvé la convention de vente des éléments d'actif est dissoute à compter de la date de cette approbation, sauf dans la mesure nécessaire pour mettre la convention à effet.

Dissolution
de la compa-
gnie vende-
resse

27 (1) Dans le cas de fusion :

Fusion

- a) si la compagnie issue de la fusion est une compagnie provinciale, les parties qui fusionnent sont, à compter de la date fixée dans les lettres patentes de fusion, prorogées comme une seule compagnie provinciale qui porte la dénomination sociale énoncée dans les lettres patentes;
- b) si la compagnie issue de la fusion est une compagnie extraprovinciale, chacune des compagnies provinciales partie à la convention est, à compter de la date de mise à effet de la fusion selon les lois du territoire de constitution de la compagnie issue de la fusion, fusionnée avec les autres parties à la convention et toutes sont prorogées comme une seule compagnie;
- c) les biens, droits, privilèges et concessions de chacune des compagnies qui fusionnent passent à la compagnie issue de la fusion à qui sont alors imposés les obligations, contrats, incapacités et dettes de celles-ci de même que toute responsabilité civile, pénale ou quasi-pénale;
- d) toute décision judiciaire ou quasi-judiciaire rendue en faveur d'une compagnie qui fusionne ou contre elle peut être exécutée par la compagnie issue de la fusion ou à l'encontre de celle-ci;
- e) les lettres patentes de fusion sont réputées l'acte constitutif de la compagnie issue de la fusion;
- f) la compagnie issue de la fusion est réputée partie demanderesse ou partie défenderesse, selon le cas, dans toute instance civile engagée avant la mise à effet de la fusion par une compagnie qui fusionne ou à l'encontre de celle-ci.

(2) Si les compagnies qui fusionnent continuent leur existence comme une seule compagnie extraprovinciale et qu'un certain nombre seulement des parties à la convention de fusion sont des compagnies provinciales, les parties à cette

Prorogation
sous le
régime d'une
autre compé-
tence législa-
tive

amalgamation agreement for an instrument amalgamating and continuing them as one corporation under the laws of that jurisdiction and, incidental to the application, every provincial corporation that is a party to the agreement may apply to the proper officer of that jurisdiction for an instrument continuing it as if it had been incorporated under the laws of that jurisdiction.

Acquisition
of assets or
amalgamation
by purchase
of shares

28.—(1) In addition to its powers under section 19, for the purpose of either acquiring the assets of any other corporation in Canada or amalgamating with any such corporation under this Part, a corporation may purchase not less than 67 per cent of the outstanding shares of any such corporation, subject to the following:

1. No such purchase shall be made except with the prior approval of the Lieutenant Governor in Council.
2. The Lieutenant Governor in Council shall deny approval unless it is shown to the satisfaction of the Lieutenant Governor in Council that,
 - i. there exists a public benefit and advantage for the purchase,
 - ii. the management of the purchasing corporation is fit both as to character and as to competence, to manage the corporation as it will exist after it completes the purchase of the assets or the amalgamation,
 - iii. each person who holds 10 per cent or more of any class of shares of the purchasing corporation can demonstrate the adequacy of their financial resources,
 - iv. each director is fit as to character and as to competence to be a director of the corporation as it will exist after it completes the purchase of the assets or the amalgamation, and
 - v. the proposed plan of operations for the corporation as it will exist after it completes the purchase of the assets or the amalgamation is feasible.

convention peuvent s'adresser au fonctionnaire attitré auprès de la compétence législative indiquée à la convention en vue d'obtenir un acte constitutif les fusionnant et prorogeant leur existence comme une seule compagnie en vertu des lois de cette compétence législative. À la suite de cette demande, chacune des compagnies provinciales parties à la convention peut également s'adresser à ce fonctionnaire en vue d'obtenir un acte constitutif qui proroge la compagnie comme si elle avait été constituée en vertu des lois de cette compétence législative.

28 (1) Outre les pouvoirs qui lui sont attribués par l'article 19, et en vue d'acquérir des éléments d'actif d'une autre compagnie au Canada ou de fusionner avec cette dernière en vertu de la présente partie, une compagnie peut acheter au moins 67 pour cent des actions en circulation de cette compagnie, sous réserve des conditions suivantes :

Acquisition
des éléments
d'actif ou
fusion au
moyen de l'a-
chat d'actions

1. L'achat doit recevoir l'approbation préalable du lieutenant-gouverneur en conseil.
2. Le lieutenant-gouverneur en conseil rejette la demande, à moins qu'il ne soit convaincu que les conditions suivantes sont réunies :
 - i. que cet achat est avantageux pour le public,
 - ii. que les membres de la direction de la compagnie acheteuse sont aptes, du point de vue de la moralité et de la compétence, à gérer celle-ci conformément à la constitution qu'aura la compagnie dès que sera parfait l'achat des éléments d'actif ou la fusion,
 - iii. que chaque personne qui détient 10 pour cent ou plus des actions d'une catégorie de la compagnie acheteuse, est en mesure d'établir sa solvabilité,
 - iv. que chacun des administrateurs est apte, du point de vue de la moralité et de la compétence, à exercer cette fonction auprès de la compagnie conformément à la constitution qu'aura la compagnie dès que sera parfait l'achat des éléments d'actif ou la fusion,
 - v. qu'est réalisable le programme d'exploitation projeté de la compagnie envisagé selon la constitution qu'elle aura dès que sera parfait l'achat des éléments d'actif ou la fusion.

3. The Lieutenant Governor in Council may approve the purchase where,
 - i. an offer to purchase shares has been accepted,
 - A. in writing by the holders of at least 67 per cent of the outstanding voting shares of such other corporation, or
 - B. by resolution or resolutions carried by the affirmative vote of the holders of at least 67 per cent of the outstanding voting shares of each class of such corporation at a general meeting of the shareholders thereof, and
 - ii. the offer to purchase has been submitted to a general meeting of the shareholders of the purchasing corporation at which the holders of at least 50 per cent of the issued voting shares of the corporation are present in person or represented by proxy and the purchase is approved by resolution carried by the affirmative vote of the holders of at least three-fourths of the shares represented at such meeting.
4. A corporation may purchase shares under this section notwithstanding any other provision of this Act so long as the provisions of this section are satisfied.
5. Where a corporation has purchased shares under this section, it shall within a period of two years after the purchase has been approved by the Lieutenant Governor in Council proceed under this Part either to acquire the assets and assume the duties, obligations and liabilities of the other corporation or amalgamate with the other corporation, but the Lieutenant Governor in Council, on being satisfied that the circumstances so warrant, may extend such period from time to time.
6. After the expiration of the period referred to in paragraph 5 and every extension thereof, the Superintendent may direct the corporation to dispose of the shares.

3. Le lieutenant-gouverneur en conseil peut donner son approbation à l'achat lorsque :
 - i. d'une part, l'offre d'achat des actions a été acceptée :
 - A. soit par écrit par les détenteurs d'au moins 67 pour cent des actions en circulation assorties du droit de vote de l'autre compagnie,
 - B. soit par résolution adoptée par le vote affirmatif des actionnaires détenant au moins 67 pour cent des actions en circulation assorties du droit de vote de chaque catégorie, exprimé lors d'une assemblée générale des actionnaires de cette compagnie,
 - ii. d'autre part, l'offre d'achat a été présentée lors d'une assemblée générale des actionnaires de la compagnie acheteuse, à laquelle les détenteurs d'au moins 50 pour cent des actions émises de la compagnie assorties du droit de vote assistaient en personne ou par fondé de pouvoir et que l'achat a été approuvé par résolution adoptée par le vote affirmatif des détenteurs d'au moins les trois quarts des actions qui y étaient représentées.
4. Malgré toute disposition contraire de la présente loi, la compagnie peut faire l'achat d'actions aux termes du présent article.
5. La compagnie qui fait l'achat d'actions aux termes du présent article est tenue, dans les deux ans de l'approbation de cet achat par le lieutenant-gouverneur en conseil, de prendre aux termes de la présente partie les mesures nécessaires aux fins soit d'acquérir les éléments d'actif et d'assumer les obligations et dettes de l'autre compagnie, soit de fusionner avec elle. Toutefois, si le lieutenant-gouverneur en conseil est convaincu de la nécessité de cette mesure, il peut proroger le délai, même à plusieurs reprises.
6. Le surintendant peut enjoindre à la compagnie de se départir des actions à l'expiration du délai visé à la disposition 5 ou de sa prorogation.

- Consideration for shares (2) The consideration for the shares acquired under this section may be cash or voting shares of the purchasing corporation or may be partly cash and partly voting shares of the purchasing corporation or may be such other consideration as may be agreed upon.
- No power to purchase own shares (3) Nothing in this section shall be construed as authorizing a corporation to purchase or acquire its own shares.
- Application (4) A corporation purchasing shares under this section shall file an application for the approval required by subsection (1) with the Superintendent.
- Notice, information (5) The Superintendent, upon the filing of an application for the approval required by subsection (1),
- (a) shall require notice of the purchase, containing such information as the Superintendent may require, to be published by the applicant in *The Ontario Gazette*, and in a newspaper having general circulation in the locality where the principal place of business of each corporation is located and, in the case of an amalgamation, in the locality where the principal place of business in Ontario of the continuing corporation is to be located; and
 - (b) may require the parties to the agreement to provide such information, material and evidence as the Superintendent may consider necessary, in addition to the information, material and evidence required to be provided under any other provision of this Act.
- Definition **29.—**(1) In this section, “acquiring corporation” means,
- (a) the amalgamated corporation resulting from the amalgamation of one or more corporations; or
 - (b) a corporation that purchases the assets of another corporation,

under this Part and for the purposes of subsections (5), (6) and (7) includes a corporation that is a transferee of the business in relation to which a trust corporation that is a party to an agreement of amalgamation or purchase and sale of assets acted as a fiduciary.

(2) La contrepartie offerte en retour des actions acquises en vertu du présent article peut se composer de sommes en espèces ou d'actions de la compagnie acheteuse assorties du droit de vote ou d'une combinaison des deux ou peut revêtir toute autre forme convenue.

Contrepartie
en retour des
actions

(3) Le présent article n'a pas pour effet d'autoriser la compagnie à acheter ou acquérir ses propres actions.

Pas de pou-
voir d'achete-
ses propres
actions

(4) La compagnie qui achète des actions en vertu du présent article dépose auprès du surintendant la demande visée au paragraphe (1).

Demande

(5) Lors du dépôt de la demande d'approbation visée au paragraphe (1), le surintendant :

Avis, rensei-
gnements

- a) doit exiger que l'auteur de la demande publie dans la *Gazette de l'Ontario* et dans un journal généralement lu à l'endroit où est situé le principal établissement de chaque compagnie, l'avis d'achat qui reproduit les renseignements qu'il exige. Dans le cas de fusion, cette publication a également lieu à l'endroit où sera situé en Ontario l'établissement principal de la compagnie issue de la fusion;
- b) peut exiger que les parties à la convention fournissent les renseignements, documents et pièces qu'il estime nécessaires, outre ceux dont la production est exigée en vertu d'une autre disposition de la présente loi.

29 (1) Pour l'application du présent article, «compagnie qui fait l'acquisition» s'entend de :

Définition
«acquiring
corporation»

- a) la compagnie issue de la fusion d'une ou de plusieurs compagnies;
- b) la compagnie qui achète les éléments d'actif d'une autre compagnie,

aux termes de la présente partie. Pour l'application des paragraphes (5), (6) et (7), le terme s'entend en outre de la compagnie qui est cessionnaire des activités que la compagnie de fiducie partie à la convention de fusion ou d'achat et de vente des éléments d'actif exerçait en qualité de fiduciaire.

Transfer of
estate, trust
and agency
business

(2) Before making the filing with the Superintendent required by subsection 23 (1), where one or more of the corporations that is a party to the amalgamation or purchase of assets is a trust corporation and the acquiring corporation is to be a loan corporation, the parties to the transaction shall make such arrangements as may be necessary to transfer to another trust corporation the business in relation to which the trust corporation acted as a fiduciary but this subsection does not apply so as to require a trust corporation to transfer to another trust corporation money received by it as deposits.

Deposits

(3) Where the acquiring corporation is,

(a) a trust corporation and one of the parties to the amalgamation or purchase of assets is a loan corporation,

(i) deposits received by the loan corporation under clause 153 (1) (a) shall be deemed to be deposits received under clause 153 (2) (a), and

(ii) deposits received by the loan corporation under clause 153 (1) (b) shall be deemed to be deposits received under clause 153 (2) (b); and

(b) a loan corporation and one of the parties to the amalgamation or purchase of assets is a trust corporation,

(i) deposits received by the trust corporation under clause 153 (2) (a) shall be deemed to be deposits received under clause 153 (1) (a), and

(ii) deposits received by the trust corporation under clause 153 (2) (b) shall be deemed to be deposits received under clause 153 (1) (b).

Trust to
pass

(4) On the approval of the Lieutenant Governor in Council as provided in section 23 to the amalgamation or purchase and sale of assets,

(a) in a case to which subsection (2) applies, all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon the transferor of the business in relation to which the trust corporation that was a party to the amalgamation or purchase and sale is making the transfer are vested in and bind and may be enforced against the transferee as fully and effectually

(2) Avant que ne soit effectué le dépôt, exigé par le paragraphe 23 (1), du document auprès du surintendant, lorsque la compagnie qui fait l'acquisition est une compagnie de prêt et que l'une au moins des parties à la fusion ou à l'achat des éléments d'actif est une compagnie de fiducie, les parties à l'acte prennent les mesures nécessaires pour céder à une autre compagnie de fiducie les activités que la compagnie de fiducie exerce en qualité de fiduciaire, à l'exclusion des sommes d'argent qu'elle a reçues à titre de dépôts.

Transfert des
activités de
fiducie

(3) Lorsque la compagnie qui fait l'acquisition est :

Dépôts

a) une compagnie de fiducie, et que l'une des parties à la fusion ou à l'achat des éléments d'actif est une compagnie de prêt :

(i) les dépôts reçus par la compagnie de prêt en vertu de l'alinéa 153 (1) a) sont réputés reçus en vertu de l'alinéa 153 (2) a),

(ii) les dépôts reçus par la compagnie de prêt en vertu de l'alinéa 153 (1) b) sont réputés reçus en vertu de l'alinéa 153 (2) b);

b) une compagnie de prêt, et que l'une des parties à la fusion ou à l'achat des éléments d'actif est une compagnie de fiducie :

(i) les dépôts reçus par la compagnie de fiducie en vertu de l'alinéa 153 (2) a) sont réputés reçus en vertu de l'alinéa 153 (1) a),

(ii) les dépôts reçus par la compagnie de fiducie en vertu de l'alinéa 153 (2) b) sont réputés reçus en vertu de l'alinéa 153 (1) b).

(4) Dès l'approbation par le lieutenant-gouverneur en conseil de la fusion ou de l'achat et de la vente des éléments d'actif, comme le prévoit l'article 23 :

Passation de
la fiducie

a) dans le cas prévu au paragraphe (2), sont acquises au cessionnaire les fiducies de toutes espèces, y compris les fiducies non parfaites ou incomplètes, ainsi que les obligations qui incombent au cédant des activités dont la compagnie de fiducie partie à la fusion ou à l'achat et à la vente effectue le transfert. Les fiducies et obligations sont alors susceptibles d'exécution à l'encontre du cessionnaire dans la

ally as if it had been originally named as the fiduciary in the instrument; and

- (b) in any other case, all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon the parties to the purchase and sale, or to the amalgamation, are vested in and bind and may be enforced against the acquiring corporation as fully and effectually as if it had been originally named as the fiduciary in the instrument.

Subject-matter of trust to vest in acquiring corporation

(5) Wherever in an instrument any estate, money or other property, or any interest, possibility or right is intended at the time or times of the publishing, making or signing of the instrument to be thereafter vested in or administered or managed by or put in the charge of the vendor corporation or of any of the amalgamating corporations as fiduciary, the name of the acquiring corporation shall be deemed to be substituted for the name of the vendor or amalgamating corporation, and such instrument vests the subject-matter therein described in the acquiring corporation according to the tenor of, and at the time indicated or intended by the instrument, and the acquiring corporation shall be deemed to stand in the place and stead of the vendor or amalgamating corporation.

References in will or codicil

(6) Where the name of the vendor corporation or of any of the amalgamating corporations appears as executor, trustee, guardian, or curator in a will or codicil, such will or codicil shall be read, construed and enforced as if the acquiring corporation was so named therein, and it has, in respect of the will or codicil, the same status and rights as the vendor or amalgamating corporation.

Duties not completed

(7) In all probates, administrations, guardianships, curatorships or appointments of administrator or litigation guardian issued or made by any court in Ontario to the vendor corporation or to any of the amalgamating corporations, from which at the date of the approval of the Lieutenant Governor in Council it had not been finally discharged, the acquiring corporations shall *ipso facto* be substituted therefor.

même mesure que si celui-ci avait été le fiduciaire original désigné dans l'acte;

- b) dans tous les autres cas, les fiducies de toutes espèces, y compris les fiducies non parfaites ou incomplètes sont acquises à la compagnie qui fait l'acquisition, ainsi que les obligations qui incombent aux parties à l'achat et à la vente. Les fiducies et les obligations sont alors susceptibles d'exécution à l'encontre de la compagnie qui fait l'acquisition dans la même mesure que si elle avait été le fiduciaire original désigné dans l'acte.

(5) Lorsque les termes de l'acte qui constate une succession, une somme d'argent ou un autre bien, intérêt, droit ou avantage possible, stipulent, au moment de la publication, de la rédaction ou de la signature de celui-ci, que les droits précités doivent par la suite être acquis à la compagnie venderesse ou l'une des compagnies qui fusionnent, ou que celle-ci doit en assurer la gestion ou les prendre en charge en tant que fiduciaire, la dénomination sociale de la compagnie qui fait l'acquisition est réputée substituée à celle de la compagnie venderesse ou de la compagnie qui fusionne. Au moment précisé ou projeté selon les termes de l'acte, l'objet qui y est indiqué est acquis à la compagnie qui fait l'acquisition et celle-ci est réputée remplacer la compagnie venderesse ou la compagnie qui fusionne.

Objet de la
fiducie acquis
à la compa-
gnie qui fait
l'acquisition

(6) Le testament ou codicille dans lequel la compagnie venderesse ou l'une des compagnies qui fusionnent figure à titre d'exécuteur testamentaire, de fiduciaire, de tuteur ou de curateur, doit se lire, s'interpréter et s'exécuter comme si la compagnie qui fait l'acquisition y était elle-même désignée. Cette dernière jouit à cet égard de la même qualité et des mêmes droits que la compagnie venderesse ou la compagnie qui fusionne.

Mentions au
testament ou
codicille

(7) La compagnie qui fait l'acquisition est substituée, à la date de l'approbation du lieutenant-gouverneur en conseil, à la compagnie venderesse ou à la compagnie qui fusionne, en ce qui concerne toutes lettres d'homologation, lettres d'administration, tutelles, curatelles ou désignations d'administrateurs ou de tuteurs à l'instance qui émanent d'un tribunal de l'Ontario en faveur de celles-ci et dont elles n'étaient pas libérées définitivement à cette date.

Obligations à
remplir

PART IV

REGISTRATION

Registration

30.—(1) The duty of determining, distinguishing and registering the corporations that under this Act are required to be registered and may be acceptable for registration, and of granting registration accordingly, is upon the Superintendent.

Registers
continued

(2) The registers known as the “Loan Companies’ Register” and the “Trust Companies’ Register” are hereby continued as the “Loan Corporations’ Register” and “Trust Corporations’ Register”, respectively.

Superin-
tendent
to keep
registers

(3) The Superintendent shall keep the registers and shall cause to be recorded,

- (a) in the Loan Corporations’ Register, the name of each loan corporation that has been granted registration together with such terms, conditions and restrictions as may be set out by the Superintendent and such other particulars as may be prescribed; and
- (b) in the Trust Corporations’ Register, the name of each trust corporation that has been granted registration together with such terms, conditions and restrictions as may be set out by the Superintendent and such other particulars as may be prescribed.

Idem

(4) A corporation may be registered in either the Loan Corporations’ Register or the Trust Corporations’ Register.

Idem

(5) The Superintendent shall note in the appropriate register,

- (a) all terms, conditions and restrictions imposed on the registration of a corporation;
- (b) the fact that the registration of a corporation has been revoked or has not been renewed;
- (c) the fact that a registered loan corporation has been continued as a registered trust corporation or *vice versa*.

Application
for
registration

31.—(1) A corporation duly constituted or incorporated under the laws of Ontario or of Canada or of another province or territory of Canada may apply for initial registration as a loan corporation or as a trust corporation.

PARTIE IV

INSCRIPTION

30 (1) Il incombe au surintendant de déterminer, de différer et, si elles s'avèrent acceptables à cette fin, d'inscrire les compagnies dont la présente loi requiert l'inscription. Inscription

(2) Les registres connus sous les appellations de «Loan Companies' Register» et «Trust Companies' Register» sont prorogés sous les appellations de «Registre des compagnies de prêt» («*Loan Corporations' Register*») et «Registre des compagnies de fiducie» («*Trust Corporations' Register*»), respectivement. Prorogation des registres

(3) Le surintendant a la garde des registres et veille à l'inscription : Le surintendant a la garde des registres

- a) dans le Registre des compagnies de prêt, de la dénomination sociale de chacune de ces compagnies qui a obtenu son inscription, ainsi que des conditions et restrictions fixées par le surintendant et des autres mentions prescrites;
- b) dans le Registre des compagnies de fiducie, de la dénomination sociale de chacune de ces compagnies qui a obtenu son inscription, ainsi que des conditions et restrictions fixées par le surintendant et des autres mentions prescrites.

(4) Une compagnie peut être inscrite soit au Registre des compagnies de prêt, soit à celui des compagnies de fiducie. Idem

(5) Le surintendant porte au registre approprié les mentions suivantes : Idem

- a) les conditions et restrictions rattachées à l'inscription d'une compagnie;
- b) la révocation ou le non-renouvellement de l'inscription;
- c) le fait que la compagnie de prêt inscrite a été prorogée en compagnie de fiducie inscrite ou vice versa.

31 (1) Une compagnie dûment constituée en vertu des lois de l'Ontario, du Canada, d'une autre province ou d'un territoire du Canada, peut faire une demande de première inscription en tant que compagnie de prêt ou compagnie de fiducie. Demande d'inscription

- Change (2) A registered loan corporation may apply to change its registration to that of a trust corporation and a registered trust corporation may apply to change its registration to that of a loan corporation.
- Idem (3) A registered corporation may apply to amend the terms, conditions and restrictions of its registration.
- Definition (4) In this section and sections 32 to 39, "application for registration" means an application under subsection (1) for initial registration, an application under subsection (2) for a change in registration or an application under subsection (3) to change terms, conditions and restrictions imposed on a registration.
- Material to be furnished (5) An application for registration shall follow the prescribed form and shall be filed with the Superintendent together with such information, material and evidence as the form may specify.
- Notice, additional information (6) Where the Superintendent receives an application for the registration, the Superintendent may require notice of the application, containing such information as the Superintendent may require, to be published by the applicant in *The Ontario Gazette* and in a newspaper having general circulation in the locality where the principal place of business of the corporation is located or is to be located.
- Additional information (7) Where the Superintendent receives an application for the registration of a corporation, the Superintendent may require the applicant to provide such information, material and evidence as the Superintendent may consider necessary, in addition to the information, material and evidence required to be provided in or with the application.
- Protection of depositors (8) An application for registration shall be accompanied by evidence that the corporation will from the time of registration be a member of the Canada Deposit Insurance Corporation or that the corporation's Canadian currency deposits will be insured by some other similar public agency approved by the Superintendent up to the maximum amounts permitted by the agency.
- Estate, trust and agency services (9) An application for registration as a trust corporation shall set out the classes of services in relation to which the corporation proposes to act in a fiduciary capacity.
- Registration of extra-provincial corporations **32.**—(1) Where an extra-provincial corporation applies for registration, the application shall be accompanied by a power of attorney from the corporation to an agent or agents resi-

(2) La compagnie de prêt inscrite peut demander que son inscription soit changée en celle de compagnie de fiducie et vice versa. Changement

(3) La compagnie inscrite peut déposer une demande en vue d'obtenir une modification des conditions et restrictions rattachées à son inscription. Idem

(4) Pour l'application du présent article et des articles 32 à 39, «demande d'inscription» s'entend de la demande de première inscription aux termes du paragraphe (1), de la demande de changement de l'inscription aux termes du paragraphe (2) et de la demande de modification des conditions et restrictions rattachées à l'inscription aux termes du paragraphe (3). Définition
«application for registration»

(5) La demande d'inscription est rédigée selon la formule prescrite, déposée auprès du surintendant et accompagnée des renseignements, documents et pièces mentionnés dans la formule. Documents prescrits

(6) Sur réception d'une demande d'inscription, le surintendant peut exiger de l'auteur de la demande que ce dernier publie dans la *Gazette de l'Ontario* et dans un journal généralement lu à l'endroit où est ou sera situé l'établissement principal de la compagnie, un avis de la demande qui reproduit les renseignements qu'il exige. Avis et renseignements supplémentaires

(7) Sur réception d'une demande d'inscription d'une compagnie, le surintendant peut exiger que l'auteur de la demande fournisse, outre ceux qui doivent accompagner la demande ou y figurer, les renseignements, documents et pièces qu'il juge nécessaires. Renseignements supplémentaires

(8) La demande d'inscription est accompagnée d'une preuve que la compagnie sera, dès le moment de l'inscription, membre de la Société d'assurance-dépôts du Canada ou que ses dépôts en monnaie canadienne seront assurés par un autre organisme public semblable approuvé par le surintendant, jusqu'à concurrence de la somme maximale permise par cet organisme. Protection des déposants

(9) La demande d'inscription en tant que compagnie de fiducie précise les catégories de services que la compagnie se propose d'offrir en sa qualité de fiduciaire. Services fiduciaires

32 (1) La demande d'inscription déposée par une compagnie extraprovinciale est accompagnée d'une procuration donnée à un ou plusieurs mandataires qui ont leur résidence en Inscription des compagnies extraprovinciales

dent in Ontario and an undertaking to the Superintendent signed by the proper corporate officers that the corporation and its subsidiaries will provide such information as the Superintendent may request and will adhere to this Act and to the terms, conditions and restrictions, if any, imposed on its registration.

Execution of
power of
attorney

(2) A power of attorney under this section shall be under the seal of the corporation, if required in the jurisdiction of incorporation of the corporation, and shall be signed by the president and secretary or other proper officers thereof in the presence of a witness.

Authenti-
cation

(3) An undertaking under this section shall be accompanied by a certified copy of the resolution of the board of directors authorizing the corporation's officers to apply for registration under this Act and authorizing the execution of the undertaking.

Contents of
power of
attorney

(4) A power of attorney under this section shall be in the prescribed form and shall be accompanied by the affidavit or statutory declaration of the witness referred to in subsection (2) attesting to the due execution of the power of attorney.

Effect of
copy as
evidence

(5) A copy of a power of attorney under this section certified by the Superintendent is sufficient evidence for all purposes of the power and authority of the person or persons named therein to act on behalf of the corporation in the manner and for the purposes set forth in the certified copy.

Changes in
chief agent
or agency

(6) When an extra-provincial corporation changes any of its agents in Ontario, it shall forthwith file with the Superintendent a new power of attorney in the prescribed form.

Rejection of
application

33. The Superintendent shall reject an application for registration,

- (a) unless the capital base of the corporation is at least \$5,000,000 in the case of a loan corporation and \$10,000,000 in the case of a trust corporation;
- (b) unless the corporation has satisfied the Superintendent that it has the capacity and power to engage in the activities of a loan corporation or a trust corporation, as the case may be;
- (c) if the applicant is not a corporation described in subsection 31 (1);

Ontario, ainsi que d'un engagement qui porte la signature des dirigeants attitrés de la compagnie. L'engagement prévoit que la compagnie et ses filiales fourniront au surintendant les renseignements qu'il peut exiger et se conformeront à la présente loi et aux conditions et restrictions, le cas échéant, rattachées à leur inscription.

(2) La procuration visée au présent article porte le sceau de la compagnie, si ce dernier est requis par les lois du territoire de constitution de la compagnie, ainsi que les signatures du président et du secrétaire ou des dirigeants attitrés, apposées en présence d'un témoin.

Signatures
apposées à la
procuration

(3) L'engagement pris aux termes du présent article est accompagné d'une copie certifiée conforme d'une résolution du conseil d'administration dont les termes autorisent les dirigeants de la compagnie à déposer la demande d'inscription, ainsi qu'à signer l'engagement.

Authen-
tification

(4) La procuration aux termes du présent article est rédigée selon la formule prescrite et est accompagné de l'affidavit ou de la déclaration solennelle du témoin visé au paragraphe (2), qui atteste la signature en bonne et due forme de la procuration.

Teneur de la
procuration

(5) La copie de la procuration visée au présent article, certifiée conforme par le surintendant, fait foi des pouvoirs et du mandat attribués dans la procuration aux personnes qui y sont nommées pour agir au nom de la compagnie, de la manière et pour les fins énoncées dans la copie certifiée conforme.

La copie fait
foi

(6) La compagnie extraprovinciale qui change l'un de ses mandataires en Ontario dépose sans délai auprès du surintendant une nouvelle procuration rédigée selon la formule prescrite.

Changement
de mandataire

33 Le surintendant rejette la demande d'inscription :

Rejet de la
demande

- a) à moins que l'apport en capital de la compagnie ne soit d'au moins 5 000 000 \$ dans le cas de la compagnie de prêt, et d'au moins 10 000 000 \$ dans le cas de la compagnie de fiducie;
- b) à moins que la compagnie n'ait convaincu le surintendant qu'elle est dotée de la capacité et des pouvoirs nécessaires à l'exercice des activités d'une compagnie de prêt ou d'une compagnie de fiducie, selon le cas;
- c) à moins que l'auteur de la demande ne soit une compagnie visée au paragraphe 31 (1);

- (d) unless it is shown to the satisfaction of the Superintendent that,
 - (i) in the locality where the principal place of business is located or is to be located there exists a public benefit and advantage for the registration of a corporation or for an additional corporation of the kind for which registration is sought,
 - (ii) the management is fit, both as to character and as to competence, to manage a corporation of the kind for which registration is sought,
 - (iii) each person who will be a holder of 10 per cent or more of any class of shares of the applicant immediately after the registration can demonstrate the adequacy of their financial resources,
 - (iv) each director is fit, both as to character and as to competence, to be a director of the corporation of the kind for which registration is being sought,
 - (v) the proposed plan of operations of the corporation is feasible, and
 - (vi) the applicant intends to offer, to the public, initially or within a reasonable time after registration, the services set out in the application for registration and the applicant has the capability to provide such services; or
- (e) if the Superintendent is not satisfied as to the adequacy of any information received with or in support of the application for registration.

Approval
subject to
conditions
and
restrictions

34.—(1) Where the Superintendent is not satisfied as to all of the matters referred to in clause 33 (a), (b) or (d), the Superintendent in lieu of rejecting the application may approve the application for registration of the applicant,

- (a) as a corporation of a kind other than that which the application for registration was made and subject to such terms, conditions and restrictions as the Superintendent may impose; or

- d) à moins que le surintendant ne soit convaincu de ce qui suit :
- (i) qu'il est avantageux pour le public de l'endroit où est ou sera situé l'établissement principal de la compagnie, de procéder à l'inscription d'une compagnie ou d'y augmenter le nombre de compagnies du genre de celle dont on sollicite l'inscription,
 - (ii) que les membres de la direction de la compagnie sont aptes, du point de vue de la moralité et de la compétence, à gérer une compagnie du genre de celle dont on sollicite l'inscription,
 - (iii) que chaque personne qui, dès l'inscription, détiendra 10 pour cent ou plus des actions d'une catégorie de l'auteur de la demande, est en mesure d'établir sa solvabilité,
 - (iv) que chacun des administrateurs est apte, du point de vue de la moralité et de la compétence, à remplir cette fonction auprès d'une compagnie du genre de celle dont on sollicite l'inscription,
 - (v) que le programme d'exploitation projeté est réalisable,
 - (vi) que l'auteur de la demande se propose d'offrir au public dès son inscription ou dans un délai raisonnable par la suite, les services énoncés dans la demande d'inscription et que celui-ci est effectivement en mesure de les fournir;
- e) s'il n'est pas convaincu que les renseignements reçus avec la demande d'inscription ou à l'appui de celle-ci sont adéquats.

34 (1) S'il conserve des doutes en ce qui concerne l'observation des normes visées aux alinéas 33 a), b) ou d), le surintendant peut, au lieu de rejeter la demande, approuver l'inscription de son auteur :

Approbation
assujettie à
des conditions
et restrictions

- a) en tant que compagnie d'un genre différent de celui sollicité par la demande d'inscription, sous réserve des conditions et restrictions qu'il peut fixer;

- (b) as the kind of corporation for which the application for registration was made but subject to such terms, conditions and restrictions as the Superintendent may impose.

Hearing

(2) Before rejecting an application or before granting an application subject to terms, conditions and restrictions, the Superintendent shall give the corporation an opportunity to be heard before him or her.

Voluntary
terms and
conditions

35. With the consent of the registered corporation, the Superintendent may impose terms, conditions and restrictions on the registration of a corporation or terms, conditions and restrictions in addition to those previously imposed on the registration of the corporation and subsection 34 (2) does not apply to such terms, conditions and restrictions.

Cancellation
of
registration
on request of
corporation

36. At the request of a registered corporation, the Superintendent may revoke its registration subject to such terms, conditions and restrictions as the Superintendent may impose.

Names

37.—(1) Subject to subsection (2), no corporation shall be registered that has a name,

- (a) that contains a word or expression prohibited by this Act or the regulations or does not contain a word or expression required by this Act or the regulations or that in any other manner does not comply with this Act or the regulations;

- (b) that is the same or similar to,

- (i) the name of a known,

- (A) body corporate,

- (B) trust,

- (C) association,

- (D) partnership,

- (E) sole proprietorship, or

- (F) individual,

whether in existence or not, or

- (ii) the known name under which any body corporate, trust, association, partnership, sole pro-

- b) en tant que compagnie du genre sollicité, mais sous réserve des conditions et restrictions qu'il peut fixer.

(2) Avant de rejeter une demande, ou de l'accueillir sous réserve de conditions et de restrictions, le surintendant donne à la compagnie l'occasion de se faire entendre. Audience

35 Le surintendant, avec le consentement de la compagnie inscrite, peut assortir l'inscription d'une compagnie de conditions et de restrictions ou en ajouter à celles déjà existantes et, dans ce cas, le paragraphe 34 (2) ne s'y applique pas. Conditions volontaires

36 Le surintendant, à la demande de la compagnie inscrite, peut révoquer l'inscription de celle-ci sous réserve des conditions et restrictions qu'il fixe. Radiation de l'inscription à la demande de la compagnie

37 (1) Sous réserve du paragraphe (2), ne peut être inscrite la compagnie dont la dénomination sociale : Dénominations sociales

- a) reproduit un mot ou une expression prohibés par la présente loi ou les règlements, ne les reproduit pas alors qu'ils sont requis ou qui pour un autre motif n'est pas conforme à la présente loi ou aux règlements;

- b) est identique ou semblable :

(i) à la dénomination sociale ou au nom :

(A) d'une personne morale,

(B) d'une fiducie,

(C) d'une association,

(D) d'une société en nom collectif,

(E) d'une entreprise à propriétaire unique,

(F) d'un particulier,

qui est connu, qu'il existe ou non,

(ii) à la dénomination sociale ou au nom connus sous lesquels une personne morale, une fiducie, une association, une société en nom collectif, une entreprise à propriétaire unique ou un particulier s'identifie ou exerce ses activités

prietorship or individual carries on business or identifies itself,

if the use of that name would be likely to deceive; or

(c) that in the case of a trust corporation does not include,

(i) “trust” or “fiducie” together with a designation such as “corporation”, “company”, “compagnie”, “limited” or “société”, or

(ii) “trustco”.

Idem

(2) Notwithstanding clause (1) (b), a corporation may be registered with a name described in subclause (1) (b) (i) or (ii) upon complying with such conditions as may be prescribed.

Bilingual names

(3) Subject to this Act and the regulations, a corporation may be registered that has a name in an English form, a French form, an English form and a French form or a combined English and French form and it may be legally designated in Ontario by any such name.

Use of different name may be required

(4) Where a corporation has a name that contravenes subsection (1), the Superintendent may register the corporation if it undertakes either to change its name to a name that does not contravene subsection (1) or to carry on business in Ontario under a name that does not contravene subsection (1).

Change of name

(5) Where, through inadvertence or otherwise, a corporation has obtained registration under a name that contravenes subsection (1), the Superintendent, after giving the corporation an opportunity to be heard, may order as a condition of registration that the corporation carry on business under a name specified in the order.

Transition

38.—(1) If a corporation was registered under a predecessor of this Act and the registration was subsisting immediately before the coming into force of this Act, the corporation, without being registered under this Act, may continue to carry on business in Ontario for sixty days following the coming into force of this Act and thereafter it may continue to carry on business in Ontario if within that sixty-day period it files an application for initial registration under section 31.

Idem

(2) Where an application referred to in subsection (1) is filed within the sixty-day period, the corporation, without

commerciales, si l'emploi de la dénomination sociale ou du nom peut s'avérer trompeur;

c) dans le cas d'une compagnie de fiducie, ne reproduit pas les mots :

(i) soit «trust» ou «fiducie», ainsi qu'une désignation telle que «corporation», «company», «compagnie», «limited» ou «société»,

(ii) soit «trustco».

(2) Malgré l'alinéa (1) b), la compagnie qui porte une dénomination sociale décrite aux sous-alinéas (1) b) (i) ou (ii) peut être inscrite si elle s'est conformée aux conditions prescrites. Idem

(3) Sous réserve de la présente loi et des règlements, peut être inscrite la compagnie qui porte une dénomination sociale anglaise, une dénomination sociale française, une dénomination sociale dans chacune de ces deux langues ou une dénomination sociale qui présente une combinaison des deux langues. La compagnie peut être légalement désignée en Ontario par n'importe laquelle de ses dénominations sociales. Dénominations sociales bilingues

(4) Le surintendant peut inscrire la compagnie dont la dénomination sociale contrevient au paragraphe (1), si celle-ci s'engage, soit à substituer à sa dénomination sociale une autre qui est conforme à ce paragraphe, soit à exercer ses activités commerciales en Ontario sous une dénomination sociale également conforme à ce paragraphe. Emploi d'une dénomination sociale différente

(5) Si, par mégarde ou autrement, la compagnie a été inscrite sous une dénomination sociale non conforme au paragraphe (1), le surintendant peut, après lui avoir donné l'occasion de se faire entendre, ordonner que l'inscription de la compagnie soit subordonnée au fait qu'elle exerce ses activités en Ontario sous la dénomination sociale qu'il précise dans l'ordonnance. Modification d'une dénomination sociale contestable

38 (1) La compagnie dont l'inscription en vertu d'une loi que la présente loi remplace était en vigueur immédiatement avant l'entrée en vigueur de la présente loi peut, sans être inscrite en vertu de cette dernière, poursuivre ses activités en Ontario pendant les soixante jours qui suivent cette entrée en vigueur. Elle peut y poursuivre ses activités par la suite si elle dépose au cours de ces soixante jours une demande de première inscription aux termes de l'article 31. Dispositions transitoires

(2) La compagnie qui a déposé la demande d'inscription visée au paragraphe (1) au cours de la période de soixante Idem

being registered under this Act, may continue to carry on business in Ontario until the day the Superintendent rejects or approves the application.

Extra-provincial corporations-conditions of registration

39.—(1) No extra-provincial corporation shall be registered unless under its instrument of incorporation, its by-laws and the laws of the jurisdiction in which it is incorporated, the corporation and its shareholders, directors, officers, employees and auditors are able to satisfy the requirements of sections 59 to 68, subsections 89 (2), (3), (4) and (5), sections 90, 96, 98, 100, 101, 102, 105, 106, 107, 108, 109 and 111 and Part IX as if the extra-provincial corporation were a provincial corporation and those provisions, upon registration, apply to the extra-provincial corporation and its shareholders, directors, officers, employees and auditors as if the corporation were a provincial corporation.

Idem

(2) It shall be deemed to be a term of registration of every extra-provincial corporation that its registration expires forthwith if its instrument of incorporation, its by-laws or the laws of the jurisdiction in which it was incorporated are amended so that the persons referred to in subsection (1) are not able to satisfy the provisions of this Act referred to in that subsection.

Idem

(3) The Superintendent may register an extra-provincial corporation that would be unable to satisfy any of the provisions of this Act referred to in subsection (1) without being in contravention of the laws of the jurisdiction in which it is incorporated if the Superintendent is of the opinion that its depositors are adequately protected.

PART V

SHARES AND SHAREHOLDERS

Deemed liability

40. For the purposes of sections 47, 48, 50 and 54, deposits in a trust corporation shall be deemed to be a liability of the corporation notwithstanding that the deposit is held by it as trustee.

Shares

41.—(1) Shares of a provincial corporation shall be in registered form and shall be without nominal or par value.

Idem

(2) Shares with a nominal or par value of a provincial corporation incorporated before the day this section comes into force shall be deemed to be shares without nominal or par value.

jours peut, jusqu'à l'acceptation ou au rejet de la demande par le surintendant, poursuivre ses activités en Ontario, sans être inscrite en vertu de la présente loi.

39 (1) Aucune compagnie extraprovinciale ne peut être inscrite sauf si, aux termes de son acte constitutif, de son règlement intérieur et des lois de son territoire de constitution, celle-ci, ainsi que ses actionnaires, administrateurs, dirigeants, employés et vérificateurs sont en mesure de se conformer aux exigences des articles 59 à 68, des paragraphes 89 (2), (3), (4) et (5), des articles 90, 96, 98, 100, 101, 102, 105, 106, 107, 108, 109 et 111, ainsi qu'à la partie IX, comme s'il s'agissait d'une compagnie provinciale. Ces dispositions s'appliquent, dès son inscription, à la compagnie extraprovinciale, ainsi qu'aux personnes précitées comme dans le cas d'une compagnie provinciale.

Conditions d'inscription des compagnies extraprovinciales

(2) Est réputée constituer une condition d'inscription de la compagnie extraprovinciale celle qui entraîne la caducité de son inscription dès l'avènement d'une modification à son acte constitutif, à son règlement intérieur ou aux lois de son territoire de constitution qui a pour effet d'empêcher les personnes visées au paragraphe (1) de se conformer aux dispositions de la présente loi qui y sont énoncées.

Idem

(3) Le surintendant peut inscrire la compagnie extraprovinciale qui ne pourrait se conformer à quelque disposition de la présente loi visée au paragraphe (1) sans contrevenir en même temps aux lois de son territoire de constitution s'il est d'avis que la protection offerte à ses déposants est suffisante.

Idem

PARTIE V

ACTIONS ET ACTIONNAIRES

40 Pour l'application des articles 47, 48, 50 et 54, sont réputés éléments du passif de la compagnie les dépôts effectués auprès d'une compagnie de fiducie, malgré le fait que ceux-ci soient détenus par la compagnie en tant que fiduciaire.

Éléments du passif réputés

41 (1) Les actions d'une compagnie provinciale sont nominatives sans valeur au pair ni nominale.

Actions

(2) Les actions d'une compagnie provinciale constituée avant l'entrée en vigueur du présent article sont réputées sans valeur au pair ni valeur nominale.

Idem

Common
shares

42.—(1) Every provincial corporation shall have one class of shares designated as “common shares” in which the rights of the holders thereof are equal in all respects and shall include,

- (a) the right to vote at all meetings of shareholders;
- (b) the right to receive the remaining property of the corporation upon dissolution; and
- (c) the right to receive dividends of the corporation if declared on such shares.

Other classes
of shares

(2) Classes of shares in addition to common shares may be provided for in the instrument of incorporation and the rights, privileges, restrictions and conditions attaching to the shares of each class shall be set out in the instrument of incorporation but such shares shall not be designated as “common shares” or by any variation of that term.

Issuance of
shares

(3) Subject to this Act and the instrument of incorporation, shares may be issued at such time and to such persons and for such consideration as the directors may determine.

Shares
non-
assessable

(4) Shares issued by a provincial corporation are non-assessable and the holders are not liable to the provincial corporation or to its creditors in respect thereof.

Fully paid
shares

(5) On and after the day this section comes into force, a share in a provincial corporation shall not be issued until the consideration for the share is fully paid in Canadian dollars and received by the corporation.

Separate
capital
account

43.—(1) A provincial corporation shall maintain a separate stated capital account for each class and series of shares it issues.

Idem

(2) A provincial corporation shall add to the appropriate stated capital account in respect of any shares it issues the full amount of the consideration.

Limitation on
additions to
stated capital
account

(3) On the issue of a share, a provincial corporation shall not add to a stated capital account in respect of the share an amount greater than the amount referred to in subsection (2).

Transition

(4) Notwithstanding subsection (2), on the day this Act comes into force, the amount in the stated capital account maintained by a provincial corporation in respect of each class or series of shares then issued shall be equal to the aggregate amount paid up on the shares of each such class or series of

42 (1) La compagnie provinciale possède une catégorie d'actions désignée sous l'appellation d'«actions ordinaires», dont les détenteurs ont des droits égaux, notamment ceux :

Actions ordinaires

- a) de voter aux assemblées des actionnaires;
- b) de partager entre eux le reliquat des biens de la compagnie lors de la dissolution;
- c) de recevoir les dividendes déclarés sur ces actions, le cas échéant.

(2) L'acte constitutif peut prévoir d'autres catégories d'actions et dans ce cas les droits, privilèges, conditions et restrictions qui se rattachent aux actions de chaque catégorie y sont énoncés. Ces actions ne peuvent toutefois être désignées sous l'appellation d'«actions ordinaires» ou d'une variante de celle-ci.

Autres catégories d'actions

(3) Sous réserve de la présente loi et de l'acte constitutif, la compagnie peut émettre des actions dont les administrateurs déterminent la date d'émission, ainsi que les personnes qui peuvent souscrire et l'apport qu'elles doivent fournir.

Émission d'actions

(4) L'émission d'une action est libératoire quant à l'apport exigible de son détenteur.

Actions libérées

(5) Dès le jour de l'entrée en vigueur du présent article, les actions ne peuvent être émises avant d'avoir été entièrement libérées en monnaie canadienne que la compagnie a effectivement reçue.

Actions entièrement libérées

43 (1) La compagnie provinciale tient un compte capital déclaré distinct pour chacune des catégories et séries d'actions émises.

Compte capital distinct

(2) La compagnie provinciale porte au crédit du compte pertinent le montant total de l'apport reçu en contrepartie des actions émises.

Idem

(3) Lorsqu'elle émet une action, la compagnie provinciale ne peut porter au crédit de son compte capital déclaré relativement à cette action un montant supérieur à celui visé au paragraphe (2).

Limites aux imputations au compte capital déclaré

(4) Malgré le paragraphe (2), le jour de l'entrée en vigueur de la présente loi, le compte capital déclaré relatif à chaque catégorie ou série d'actions alors émises de la compagnie provinciale est égal au montant total reçu pour les actions libé-

Disposition transitoire

shares immediately prior thereto, and a provincial corporation may, upon complying with subsection (5), add to the stated capital account maintained by it in respect of any class or series of shares any amount it has credited to a retained earnings or other surplus account.

Special
resolution
additions to
stated capital
account

(5) Where a provincial corporation proposes to add any amount, other than an amount to be added under subsection 54 (2), to a stated capital account that it maintains in respect of a class or series of shares, the addition to the stated capital account must be approved by special resolution if,

- (a) the amount to be added,
 - (i) was not received by the provincial corporation as consideration for the issue of shares, or
 - (ii) was received by the provincial corporation as consideration for the issue of shares but does not form part of the stated capital attributable to such shares; and
- (b) the provincial corporation has outstanding shares of more than one class or series.

Idem

(6) Where a class or series of shares of a provincial corporation would be affected by the addition of an amount to any stated capital account in a situation where a special resolution is required under subsection (5) in a manner different from the manner in which any other class or series of shares of the provincial corporation would be affected by such action, the holders of the differently affected class or series of shares are entitled to vote separately as a class or series, as the case may be, on the proposal to take the action, whether or not such shares otherwise carry the right to vote.

Special
shares
in series

44.—(1) Subject to its instrument of incorporation, the directors of a provincial corporation may authorize the issue of any class of shares other than common shares in one or more series and they may fix the number of shares in, and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series.

Proportionate
abatement

- (2) If any amount,
- (a) of cumulative dividends, whether or not declared, or declared non-cumulative dividends; or

rées de chacune d'elles immédiatement avant cette date. La compagnie provinciale peut, après s'être conformée au paragraphe (5), porter au crédit du compte capital déclaré relatif à une catégorie ou série d'actions les sommes auparavant portées au crédit d'un compte de bénéfices non répartis ou d'un autre compte de surplus.

(5) L'imputation d'une somme au compte capital déclaré relatif aux actions d'une catégorie ou d'une série, autrement qu'en vertu du paragraphe 54 (2), doit être approuvé par résolution spéciale si :

Résolution
spéciale,
imputation au
compte capi-
tal déclaré

a) d'une part, la somme à porter au crédit :

- (i) n'a pas été reçue par la compagnie provinciale en contrepartie de l'émission d'actions,
- (ii) a été reçue par la compagnie provinciale en contrepartie de l'émission d'actions, mais ne fait pas partie du capital déclaré relatif à ces actions;

b) d'autre part, la compagnie provinciale compte des actions en circulation de plusieurs catégories ou séries.

(6) Dans le cas où l'imputation d'une somme à un compte capital déclaré d'une compagnie provinciale aurait une incidence particulière sur une catégorie ou une série distincte d'actions lorsqu'une résolution spéciale est exigée aux termes du paragraphe (5), leurs détenteurs ont le droit de voter séparément sur la proposition en tant que détenteurs de ces actions, que celles-ci comportent ou non le droit de vote.

Idem

44 (1) Sous réserve de son acte constitutif, les administrateurs de la compagnie provinciale peuvent autoriser l'émission d'une catégorie d'actions autres que les actions ordinaires en une ou plusieurs séries, fixer le nombre d'actions et la désignation de chaque série et déterminer les droits, privilèges, restrictions et conditions rattachés aux actions de chaque série.

Émission
d'actions
spéciales en
série

(2) Lorsque :

Diminution
proportion-
nelle

- a) soit un dividende cumulatif, déclaré ou non, ou un dividende déclaré non cumulatif;

- (b) payable on return of capital in the event of the liquidation, dissolution or winding up of a provincial corporation,

in respect of shares of a series is not paid in full, the shares of the series shall participate rateably with the shares of all other series of the same class in respect of,

- (c) all accumulated cumulative dividends, whether or not declared, and all declared non-cumulative dividends; or
- (d) all amounts payable on return of capital in the event of the liquidation, dissolution or winding up of the corporation,

as the case may be.

No priority
of shares of
same class

(3) No rights, privileges, restrictions or conditions attached to a series of shares whose issue is authorized under this section shall confer upon the shares of a series a priority in respect of,

- (a) dividends; or
- (b) return of capital in the event of the liquidation, dissolution or winding up of the corporation,

over the shares of any other series of the same class.

Conversion
privileges

45.—(1) A provincial corporation may issue warrants as evidence of conversion privileges or options or rights to acquire its securities and it shall set out the conditions thereof,

- (a) in certificates evidencing the securities to which the conversion privileges, options or rights are attached; or
- (b) in separate certificates or other documents.

Idem

(2) Conversion privileges and options or rights to purchase securities of a provincial corporation may be made transferable or non-transferable, and options or rights to purchase may be made separable or inseparable from any securities to which they are attached.

Corporation
to maintain
sufficient
reserve

(3) Where a provincial corporation has granted privileges to convert any securities, other than shares issued by it, into shares of the corporation or has issued or granted options or rights to acquire shares of the corporation and, where the

- b) soit un remboursement du capital lors de la liquidation ou de la dissolution de la compagnie provinciale,

relativement aux actions d'une série, n'est pas versé en entier, les actions de cette série participent au prorata avec les autres actions de toutes les autres séries de la même catégorie en ce qui concerne, selon le cas :

- c) les dividendes accumulés, déclarés ou non, ainsi que les dividendes déclarés non cumulatifs;
- d) le remboursement du capital lors de la liquidation ou de la dissolution de la compagnie.

(3) Les droits, privilèges, restrictions et conditions rattachés aux actions d'une série dont l'émission est autorisée en vertu du présent article ne peuvent leur conférer de traitement préférentiel au préjudice des actions d'une autre série de la même catégorie en ce qui a trait :

Aucun traitement préférentiel dans une même catégorie d'actions

- a) aux dividendes;
- b) au remboursement du capital lors de la liquidation ou de la dissolution.

45 (1) La compagnie provinciale peut délivrer des bons de souscription attestant des privilèges de conversion, des options ou des droits d'acquérir ses valeurs mobilières, aux conditions qu'elle énonce :

Privilèges de conversion

- a) soit dans des certificats attestant les valeurs mobilières auxquelles ces privilèges de conversion, options ou droits se rattachent;
- b) soit dans des certificats distincts ou dans d'autres documents.

(2) Les privilèges de conversion peuvent être négociables ou non négociables. Il en est de même pour les options et les droits d'acquérir des valeurs mobilières de la compagnie, qui peuvent être séparables ou non des valeurs mobilières auxquelles ils se rattachent.

Idem

(3) La compagnie provinciale qui a accordé des privilèges de conversion d'autres valeurs mobilières en ses propres actions, ou qui a accordé des options ou des droits d'acquérir ses actions, et dont le capital autorisé est limité par son acte

Nécessité d'une réserve suffisante

instrument of incorporation limits the number of authorized shares, the corporation shall reserve and continue to reserve sufficient authorized shares to meet the exercise of such conversion privileges, options and rights.

Subsidiaries
not to hold
shares in
holding body
corporate

46. Except as provided in sections 47 to 49, a provincial corporation,

- (a) shall not hold shares in itself or in its holding body corporate; and
- (b) shall not permit any of its subsidiaries to hold shares in the corporation or in the holding body corporate of the corporation.

Purchase
of issued
shares

47.—(1) Subject to subsection (2) and to its by-laws, a provincial corporation may, on notice to the Superintendent, purchase or otherwise acquire shares issued by it to,

- (a) settle or compromise a debt or claim asserted by or against the corporation;
- (b) eliminate fractional shares; or
- (c) fulfil the terms of a non-assignable agreement under which the corporation has an option or is obliged to purchase shares owned by a current or former director, officer or employee of the corporation.

Restriction
on payment

(2) A provincial corporation shall not make any payment to purchase or acquire under subsection (1) shares issued by it if there are reasonable grounds for believing that,

- (a) the corporation is or, after the payment, would be unable to pay its liabilities as they become due;
- (b) after the payment, the realizable value of the corporation's assets would be less than the aggregate of,
 - (i) its liabilities, and
 - (ii) the amount that would be required to pay the holders of shares who have a right to be paid, on a redemption or in a liquidation, prior to the holders of the shares to be purchased or acquired; or

constitutif, conserve toujours un nombre suffisant d'actions autorisées pour assurer l'exercice de ces privilèges, options ou droits.

46 Sauf dispositions contraires des articles 47 à 49, la compagnie provinciale ne peut :

Une filiale ne peut être titulaire des actions de sa personne morale mère

- a) détenir ses propres actions ni celles de sa personne morale mère;
- b) permettre à ses filiales de détenir ses actions ni celles de sa personne morale mère.

47 (1) Sous réserve du paragraphe (2) et de son règlement intérieur, la compagnie provinciale peut, sur avis au surintendant, acheter ou autrement acquérir les actions qu'elle a émises, afin :

Acquisition de ses propres actions

- a) d'effectuer une transaction relative à une créance ou une demande contre la compagnie ou en sa faveur;
- b) d'éliminer le fractionnement de ses actions;
- c) d'exécuter un contrat incessible aux termes duquel la compagnie a une option ou l'obligation d'acheter les actions d'un ancien ou présent administrateur, dirigeant ou employé de la compagnie.

(2) La compagnie provinciale ne peut faire aucun versement en vue d'acheter ou d'acquérir en vertu du paragraphe (1) les actions qu'elle a émises, s'il existe des motifs raisonnables de croire que :

Restriction au remboursement

- a) elle ne peut ou, de ce fait, ne pourrait acquitter son passif à échéance;
- b) la valeur de réalisation de son actif serait de ce fait inférieure au total des deux montants suivants :
 - (i) son passif,
 - (ii) les sommes nécessaires au remboursement, en cas de rachat ou de liquidation, des actions payables par préférence, par rapport aux actions que la compagnie se propose d'acheter ou d'acquérir;

- (c) the effect of the purchase or acquisition would be to cause the corporation to be in contravention of this Act or the regulations.

Redemption
of shares

48.—(1) Subject to subsection (2) and to its by-laws and on notice to the Superintendent, a provincial corporation may purchase or redeem any redeemable shares issued by it at prices not exceeding the redemption price calculated according to a formula stated in the by-laws.

Restriction
on
redemption

(2) A provincial corporation shall not make any payment to purchase or redeem any redeemable shares issued by it if there are reasonable grounds for believing that,

- (a) the corporation is or, after the payment, would be unable to pay its liabilities as they become due;
- (b) after the payment, the realizable value of the corporation's assets would be less than the aggregate of,
 - (i) its liabilities, and
 - (ii) the amount that would be required to pay the holders of shares who have a right to be paid, on a redemption or in a liquidation, rateably with or prior to the holders of the shares to be purchased or redeemed; or

- (c) the effect of the redemption would be to cause the corporation to be in contravention of this Act or the regulations.

Donation of
share

49. A provincial corporation may accept from any shareholder a share of the corporation surrendered to it as a gift.

Reduction of
stated capital
account

50.—(1) Subject to subsection (4) and its instrument of incorporation, a provincial corporation, by special resolution and with the approval of the Superintendent, may reduce its stated capital for any purpose.

Right to
vote

(2) Where a class or series of shares of a provincial corporation would be affected by a reduction of stated capital under subsection (1) in a manner different from the manner in which any other class or series of shares of the corporation would be affected by such action, the holders of the differently affected class or series of shares are entitled to vote separately as a class or series, as the case may be, on the proposal to take the action, whether or not the shares otherwise carry the right to vote.

- c) la compagnie contreviendrait, du fait de l'achat ou de l'acquisition, à la présente loi ou aux règlements.

48 (1) Sous réserve du paragraphe (2) et de son règlement intérieur, la compagnie provinciale peut, sur avis au surintendant, acheter ou racheter des actions rachetables qu'elle a émises, à un prix qui ne dépasse pas le prix de rachat calculé selon la formule énoncée au règlement intérieur.

Rachat des actions

(2) La compagnie provinciale ne doit faire aucun versement en vue d'acheter ou de racheter les actions rachetables qu'elle a émises, s'il existe des motifs raisonnables de croire que :

Restrictions au rachat

- a) elle ne peut ou, de ce fait, ne pourrait acquitter son passif à échéance;
- b) la valeur de réalisation de son actif serait de ce fait inférieure au total des deux montants suivants :
- (i) son passif,
- (ii) les sommes nécessaires au remboursement, en cas de rachat ou de liquidation, des actions payables au prorata ou par préférence, par rapport aux actions que la compagnie se propose d'acheter ou d'acquérir;
- c) la compagnie contreviendrait, du fait du rachat, à la présente loi ou aux règlements.

49 La compagnie provinciale peut accepter que les actions qu'elle a émises lui soient remises par un actionnaire à titre de donation.

Donation d'actions

50 (1) Sous réserve du paragraphe (4) et de son acte constitutif, la compagnie provinciale peut, par résolution spéciale et avec l'autorisation du surintendant, réduire son capital déclaré à toutes fins.

Réduction du compte capital déclaré

(2) Dans le cas où une réduction du capital déclaré aux termes du paragraphe (1) aurait une incidence particulière sur une catégorie ou une série distincte d'actions, leurs détenteurs ont le droit de voter séparément sur la proposition en tant que détenteurs de ces actions, que celles-ci comportent ou non le droit de vote.

Droit de vote

Account
reduced to
be
specified

(3) A special resolution under this section shall specify the stated capital account or accounts from which the reduction of stated capital affected by the special resolution will be made.

Restriction
on reduction

(4) A provincial corporation shall not take any action to reduce its stated capital for any purpose (other than the purpose of declaring it to be reduced by an amount that is not represented by realizable assets) if there are reasonable grounds for believing that,

- (a) the corporation is or, after the taking of such action, would be unable to pay its liabilities as they become due;
- (b) after the taking of such action, the realizable value of the corporation's assets would be less than the aggregate of its liabilities; or
- (c) the effect of the reduction would be to cause the corporation to be in contravention of this Act or the regulations.

Application
for order
where
improper
reduction

(5) A shareholder, creditor or depositor of a provincial corporation is entitled to apply to the High Court of Justice for an order compelling a shareholder or other recipient to pay or deliver to the corporation any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this section.

Action
against class

(6) Where it appears that there are numerous shareholders who may be liable under this section, the High Court of Justice may permit an action to be brought against one or more of them as representatives of the class and, if the plaintiff establishes a claim as creditor, may make an order of reference and add as parties in the referee's office all such shareholders as may be found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim, which amount may not, in the case of any particular shareholder, exceed the amount referred to in subsection (5), and the referee may direct payment of the sums so determined.

Shareholder
holding
shares
in fiduciary
capacity

(7) No person holding shares in the capacity of a personal representative and registered on the records of the provincial corporation as a shareholder and therein described as the personal representative of a named person is personally liable under this section, but the named person is subject to all the liabilities imposed by this section.

(3) La résolution spéciale adoptée aux termes du présent article indique le ou les comptes capital déclaré au débit desquels seront portées les réductions.

Indication des
comptes
affectés

(4) La compagnie provinciale ne peut accomplir aucun acte visant à réduire son capital déclaré, autre qu'aux fins de le déclarer réduit d'une somme qui ne représente pas des biens réalisables de l'actif, s'il existe des motifs raisonnables de croire que :

Limite à la
réduction

- a) elle ne peut ou, de ce fait, ne pourrait acquitter son passif à échéance;
- b) la valeur de réalisation de son actif serait de ce fait inférieure à son passif;
- c) la compagnie contreviendrait, du fait de la réduction, à la présente loi ou aux règlements.

(5) L'actionnaire, le créancier ou le déposant de la compagnie provinciale peut demander à la Haute Cour, par voie de requête, de rendre une ordonnance enjoignant à un actionnaire ou à un autre bénéficiaire de restituer à la compagnie les sommes versées ou les biens remis à l'actionnaire ou à l'autre bénéficiaire à la suite d'une réduction de capital non conforme au présent article.

Requête en
cas de réduction
injustifiée

(6) S'il paraît que plusieurs actionnaires peuvent être responsables en vertu du présent article, la Haute Cour peut permettre qu'une action soit intentée contre un ou plusieurs d'entre eux en tant que représentants du groupe. Si le demandeur établit le bien-fondé de sa réclamation, la Haute Cour peut renvoyer l'action devant un arbitre et, à cette fin, joindre comme parties tous les actionnaires reconnus à ce titre. L'arbitre fixe la quote-part que chacun doit contribuer à la somme due au demandeur et peut ordonner que les quote-parts soient versées. La quote-part d'un seul actionnaire ne peut cependant pas dépasser la somme visée au paragraphe (5).

Recours contre
un groupe

(7) Aucune personne qui détient des actions en qualité d'ayant droit et qui est inscrite aux registres de la compagnie à la fois comme l'ayant droit d'une personne désignée et comme actionnaire, n'est personnellement responsable en vertu du présent article. La personne désignée conserve cependant cette responsabilité.

Actionnaire
en qualité de
fiduciaire

Liability
not affected

(8) This section does not affect any liability that arises under section 105.

Reduction of
stated capital
account

51.—(1) Upon a purchase, redemption or other acquisition by a provincial corporation under section 47, 48 or 55 of shares or fractions thereof issued by it, the corporation shall deduct from the stated capital account maintained for the class or series of shares of which the shares purchased, redeemed or otherwise acquired form a part, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series or fractions thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

Adjustment
in stated
capital
account

(2) A provincial corporation shall adjust its stated capital account or accounts in accordance with any special resolution referred to in subsection 50 (3).

Idem

(3) Upon a change in issued shares of a provincial corporation, or upon a conversion of such shares pursuant to their terms, into shares of another class or series, the corporation shall,

- (a) deduct from the stated capital account maintained for the class or series of shares changed or converted an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series changed or converted, and dividing by the number of issued shares of that class or series immediately before the change or conversion; and
- (b) add the result obtained under clause (a) and any additional consideration received pursuant to the change or conversion to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been changed or converted.

Idem

(4) For the purpose of subsection (3), where a provincial corporation issues two classes or series of shares and there is attached to each class or series a right to convert a share of the one class or series into a share of the other class or series, the amount of stated capital attributable to a share in either class or series is the amount obtained when the sum of the stated capital of both classes or series of shares is divided by the number of issued shares of both classes or series of shares immediately before the conversion.

(8) Le présent article n'a pas d'incidence sur les obligations qui naissent de l'article 105.

Les obligations demeurent

51 (1) La compagnie provinciale qui acquiert, notamment par achat ou rachat, en vertu des articles 47, 48 ou 55, des actions ou fractions d'actions qu'elle a émises, débite le compte capital déclaré de la catégorie ou de la série pertinente, du produit obtenu en multipliant le capital déclaré des actions de cette catégorie ou série par le nombre d'actions ou de fractions d'actions ainsi acquises, divisé par le nombre d'actions émises de cette catégorie ou série qui existaient immédiatement avant l'acquisition.

Somme débitée au compte lors de l'acquisition d'actions, etc.

(2) La compagnie provinciale rectifie ses comptes capital déclaré conformément aux résolutions spéciales visées au paragraphe 50 (3).

Rectification des comptes capital déclaré

(3) La compagnie provinciale qui effectue le changement de catégorie ou de série de ses actions, ou leur conversion conformément aux conditions qui s'y rattachent, porte :

Idem

- a) au débit du compte capital déclaré de la catégorie ou de la série initiale, le produit obtenu en multipliant le capital déclaré des actions de cette catégorie ou série par le nombre d'actions qui ont fait l'objet du changement ou de la conversion à une autre catégorie ou série, divisé par le nombre d'actions émises de cette catégorie ou série qui existaient immédiatement avant le changement ou la conversion;
- b) au crédit du compte capital déclaré de la catégorie ou série nouvelle, le produit obtenu aux termes de l'alinéa a) ainsi que tout apport supplémentaire reçu au titre de la conversion ou du changement.

(4) Pour l'application du paragraphe (3), lorsque la compagnie provinciale émet deux catégories ou séries d'actions donnant un droit de conversion réciproque, le montant du capital déclaré attribué à une action de l'une ou l'autre catégorie ou série est égal au montant qui correspond à la somme du capital déclaré des deux catégories ou séries, divisé par le nombre d'actions émises de chacune d'elles qui existaient immédiatement avant la conversion.

Idem

- Status of shares purchased (5) Shares of any class or series or fractional shares issued by a provincial corporation and purchased, redeemed or otherwise acquired by it shall be cancelled or, if the instrument of incorporation limits the number of authorized shares of the class or series, may be restored to the status of authorized but unissued shares of the class or series.
- Conversion of shares (6) Where shares of a class or series are changed or converted pursuant to their terms into the same or another number of shares of another class or series, such shares become the same in all respects as the shares of the class or series respectively into which they are changed or converted.
- Contract with corporation re purchase of its shares **52.**—(1) A contract with a provincial corporation providing for the purchase by it of its own shares is specifically enforceable against it except to the extent that it can not perform the contract without thereby being in breach of section 47 or 48.
- Idem (2) In any action brought on a contract referred to in subsection (1), the provincial corporation has the burden of proving that performance thereof is prevented by section 47 or 48.
- Idem (3) Until the provincial corporation has fully performed a contract referred to in subsection (1), the other party to the contract retains the status of a claimant entitled to be paid as soon as the corporation is lawfully able to do so or in a liquidation to be ranked subordinate to the rights of depositors, creditors and holders of subordinated notes but in priority to the other shareholders.
- Commission on sale **53.** The directors of a provincial corporation may authorize the corporation to pay a reasonable commission to any person in consideration of the person,
- (a) purchasing or agreeing to purchase shares of the corporation from it or from any other person; or
 - (b) procuring or agreeing to procure purchasers for any such shares.
- Declaration of dividends **54.**—(1) The directors of a provincial corporation may declare and a provincial corporation may pay a dividend by issuing fully paid shares of the corporation or options or rights to acquire fully paid shares of the corporation and, subject to subsection (3), a provincial corporation may pay a dividend in money or property.
- Share dividend (2) If shares of a provincial corporation are issued in payment of a dividend, it shall add to the stated capital account

(5) Les actions ou fractions d'actions de toutes les catégories ou séries émises par la compagnie provinciale et acquises par elle, notamment par achat ou rachat, sont annulées. Toutefois, si le nombre d'actions autorisées de la catégorie ou série est limité par l'acte constitutif, celles-ci peuvent redevenir des actions autorisées non émises de la catégorie ou de la série donnée.

Statut des actions acquises

(6) Si les actions d'une catégorie ou série font l'objet d'un changement ou d'une conversion conformément aux conditions qui s'y rattachent, en un nombre égal ou différent d'actions de la nouvelle catégorie ou série, ces actions sont assimilées aux actions de leur nouvelle catégorie ou série.

Conversion des actions

52 (1) La compagnie provinciale peut être tenue d'exécuter intégralement les contrats qu'elle a conclus en vue de l'achat de ses propres actions, dans la mesure où elle ne contrevient pas de ce fait aux articles 47 ou 48.

Contrat d'achat de ses propres actions

(2) Dans toute instance relative au contrat mentionné au paragraphe (1), le fardeau de prouver que l'exécution de ce contrat est prohibée par les articles 47 ou 48 revient à la compagnie.

Idem

(3) Jusqu'à l'exécution complète du contrat mentionné au paragraphe (1), le cocontractant conserve le droit d'être payé dès que la compagnie est légalement en mesure de le faire, ou lors d'une liquidation, d'être colloqué à la suite des déposants, des créanciers et des détenteurs de titres subalternes, mais par préférence aux autres actionnaires.

Idem

53 Les administrateurs d'une compagnie provinciale peuvent autoriser la compagnie à verser une commission raisonnable à la personne :

Commission sur la vente des actions

- a) qui achète ou convient d'acheter des actions de la compagnie, soit de cette dernière, soit d'une autre personne;
- b) qui fait acheter des actions de celle-ci ou qui s'engage à le faire.

54 (1) Les administrateurs de la compagnie provinciale peuvent déclarer un dividende. La compagnie peut payer ce dividende par l'émission d'actions entièrement libérées de la compagnie, en options ou en droits d'acquérir ces actions, ou, sous réserve du paragraphe (3), en monnaie ou en biens.

Déclaration de dividendes

(2) Si le paiement d'un dividende est effectué par l'émission d'actions, la compagnie provinciale porte au crédit du compte

Dividende sous forme d'actions

for the shares of the class or series issued in payment of the dividend the declared amount of the dividend stated as an amount of money.

When
dividend
not to be
declared

(3) The directors shall not declare and a provincial corporation shall not pay a dividend if there are reasonable grounds for believing that,

- (a) the corporation is or, after the payment, would be unable to pay its liabilities as they become due;
- (b) after the payment, the lesser of the book value and the realizable value of the corporation's assets would thereby be less than the aggregate of,
 - (i) its liabilities, and
 - (ii) its stated capital of all classes; or
- (c) the effect of the payment would be to cause the corporation to be in contravention of this Act or the regulations.

Lien on
shares

55.—(1) The by-laws of a provincial corporation may provide that it has a lien on a share registered in the name of a shareholder or the shareholder's personal representative for a debt of that shareholder to the provincial corporation.

Where
subs.(1)
does not
apply

(2) Subsection (1) does not apply to a provincial corporation that has shares listed on, or traded through the facilities of, a stock exchange recognized by the Ontario Securities Commission.

Enforcement
of lien

(3) A provincial corporation may enforce a lien referred to in subsection (1) in accordance with its by-laws.

Restrictions
on issue,
transfer, etc.

56. A provincial corporation shall not impose restrictions on the issue, transfer or ownership of shares of any class or series except such restrictions as are authorized by its instrument of incorporation and this Act.

Investment
securities
1982, c. 4

57. Part VI of the *Business Corporations Act, 1982* applies with necessary modifications with respect to every provincial corporation as if it were a corporation incorporated under that Act.

Insider
liability

58. Part X of the *Business Corporations Act, 1982* applies with necessary modifications with respect to every provincial corporation as if it were a corporation incorporated under that Act.

capital déclaré de la catégorie ou série pertinente le montant déclaré du dividende, en monnaie.

(3) Les administrateurs ne peuvent déclarer un dividende et la compagnie provinciale ne peut le payer s'il existe des motifs raisonnables de croire que :

Cas où la déclaration d'un dividende est prohibée

- a) celle-ci ne peut ou, de ce fait, ne pourrait acquitter son passif à échéance;
- b) la moins élevée de la valeur comptable et la valeur de réalisation de son actif serait de ce fait inférieure au total des deux montants suivants :
 - (i) son passif,
 - (ii) son capital déclaré de toutes catégories;
- c) la compagnie contreviendrait, du fait de payer le dividende, à la présente loi ou aux règlements.

55 (1) Le règlement intérieur de la compagnie provinciale peut prévoir que l'action inscrite au nom de l'actionnaire ou de son ayant droit est grevée d'un privilège relativement à une dette de l'actionnaire envers la compagnie.

Privilège sur les actions

(2) Le paragraphe (1) ne s'applique pas à la compagnie provinciale dont les actions sont cotées ou négociées à une bourse reconnue par la Commission des valeurs mobilières de l'Ontario.

Non-application du par. (1)

(3) La compagnie provinciale peut, conformément à son règlement intérieur, réaliser le privilège visé au paragraphe (1).

Réalisation du privilège

56 La compagnie provinciale ne doit pas imposer de restrictions à l'émission, au transfert ou au droit de propriété de ses actions de quelque catégorie ou série, à l'exception des restrictions qu'autorisent son acte constitutif et la présente loi.

Restrictions à l'émission, au transfert, etc.

57 La partie VI de la *Loi de 1982 sur les compagnies* s'applique, avec les adaptations nécessaires, à la compagnie provinciale, comme s'il s'agissait d'une compagnie constituée en vertu de cette loi.

Valeurs de placement 1982, chap. 4

58 La partie X de la *Loi de 1982 sur les compagnies* s'applique, avec les adaptations nécessaires, à la compagnie provinciale, comme s'il s'agissait d'une compagnie constituée en vertu de cette loi.

Responsabilité des initiés

Definition

59.—(1) For the purposes of this section and sections 60 and 61, “non-resident” means,

- (a) an individual who is not a resident Canadian;
- (b) a body corporate incorporated, formed or otherwise organized elsewhere than in Canada;
- (c) a body corporate that is controlled directly or indirectly by non-residents as defined in clause (a) or (b);
- (d) a trust established by a non-resident as defined in clause (a), (b) or (c) or a trust in which non-residents as so defined have more than 50 per cent of the beneficial interest; or
- (e) a body corporate that is controlled directly or indirectly by a trust mentioned in clause (d).

Associated shareholder

(2) For the purposes of this section and sections 60 and 61, a shareholder shall be deemed to be associated with another shareholder if,

- (a) one shareholder is a body corporate of which the other shareholder is an officer or director;
- (b) one shareholder is a partnership of which the other shareholder is a partner;
- (c) one shareholder is a body corporate that is controlled directly or indirectly by the other shareholder;
- (d) both shareholders are bodies corporate and one shareholder is controlled directly or indirectly by the same individual or body corporate that controls directly or indirectly the other shareholder;
- (e) both shareholders are members of a voting trust that relates to shares of a corporation; or
- (f) both shareholders are associated within the meaning of clause (a), (b), (c), (d) or (e) with the same shareholder.

Shares held jointly

(3) For the purposes of this section and sections 60 and 61, where a voting share of a provincial corporation is held jointly and one or more of the joint holders thereof is a non-resident, the share shall be deemed to be held by a non-resident.

59 (1) Pour l'application du présent article et des articles 60 et 61, «non-résident» s'entend :

Définition
«non-résident»

- a) du particulier qui n'est pas résident canadien;
- b) de la personne morale constituée, formée ou autrement organisée ailleurs qu'au Canada;
- c) de la personne morale dont des non-résidents, tels que définis aux alinéas a) ou b), ont directement ou indirectement le contrôle;
- d) de la fiducie constituée par un non-résident, tel que défini aux alinéas a), b) ou c), ou la fiducie dont cette personne est bénéficiaire dans une proportion de plus de 50 pour cent;
- e) de la personne morale dont une fiducie visée à l'alinéa d) a directement ou indirectement le contrôle.

(2) Pour l'application du présent article et des articles 60 et 61, deux actionnaires ont des liens entre eux, si, selon le cas :

Actionnaires
ayant des
liens entre
eux

- a) l'un des actionnaires est une personne morale dont l'autre est un dirigeant ou un administrateur;
- b) l'un des actionnaires est une société dont l'autre est l'associé;
- c) l'un des actionnaires est une personne morale contrôlée par l'autre, directement ou indirectement;
- d) les deux actionnaires sont des personnes morales contrôlées, directement ou indirectement, par la même personne physique ou morale;
- e) les deux actionnaires sont parties à une convention de vote fiduciaire relative aux actions d'une compagnie;
- f) les deux actionnaires ont des liens, au sens des alinéas a), b), c), d) ou e), avec le même actionnaire.

(3) Pour l'application du présent article et des articles 60 et 61, l'action d'une compagnie provinciale assortie du droit de vote qui est détenue en commun est réputée détenue par un non-résident lorsque l'un ou plusieurs des détenteurs communs sont des non-résidents.

Actions détenues en commun

Deemed
control

(4) For the purposes of this section and sections 60 and 61, a body corporate shall be deemed to be controlled by another person or body corporate or by two or more bodies corporate if voting securities of the first-mentioned body corporate carrying more than 10 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or body or bodies corporate.

Limit on
shares held
by
non-resident

60.—(1) The directors of a provincial corporation shall refuse to allow in the securities register of the corporation the entry of a transfer of any voting shares of the corporation to a non-resident,

- (a) if, when the total number of voting shares of the corporation held by non-residents exceeds 25 per cent of the total number of issued and outstanding voting shares, the entry of the transfer would increase the percentage of such shares held by non-residents;
- (b) if, when the total number of voting shares of the corporation held by non-residents is 25 per cent or less of the total number of issued and outstanding voting shares, the entry of the transfer would cause the total number of such shares held by non-residents to exceed 25 per cent of the total number of issued and outstanding voting shares;
- (c) if, when the total number of the voting shares of the corporation held by the non-resident and by other shareholders associated with the non-resident, if any, exceeds 10 per cent of the total number of issued and outstanding voting shares, the entry of the transfer would increase the percentage of such shares held by the non-resident and by other shareholders associated with the non-resident; or
- (d) if, when the total number of voting shares of the corporation held by the non-resident and by other shareholders associated with the non-resident, if any, is 10 per cent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the number of such shares held by the non-resident and by other shareholders associated with the non-resident, if any, to exceed 10 per cent of the issued and outstanding voting shares.

(4) Pour l'application du présent article et des articles 60 et 61, une personne ou une ou plusieurs personnes morales sont réputées avoir le contrôle d'une autre personne morale si celles-ci détiennent ou sont bénéficiaires, autrement qu'à titre de garantie seulement, des valeurs mobilières de cette autre personne morale qui comportent plus de 10 pour cent des voix qui peuvent être exprimées pour élire les administrateurs.

Contrôle
réputé

60 (1) Les administrateurs d'une compagnie provinciale ne doivent pas permettre l'inscription, au registre de ses valeurs mobilières, du transfert en faveur de non-résidents d'actions assorties du droit de vote, si l'inscription de ce transfert devait avoir pour effet :

Limite au
nombre d'ac-
tions détenues
par des non-
résidents

- a) d'augmenter le pourcentage de ces actions détenues par des non-résidents alors que leur nombre représente déjà plus de 25 pour cent du nombre total d'actions de la compagnie assorties du droit de vote, émises et en circulation;
- b) de porter à plus de 25, alors qu'il est égal ou inférieur à ce chiffre, le pourcentage de ces actions détenues par des non-résidents, par rapport au nombre total d'actions de la compagnie assorties du droit de vote, émises et en circulation;
- c) d'augmenter le pourcentage de ces actions détenues par un non-résident et les actionnaires qui ont des liens avec lui, le cas échéant, alors que leur nombre représente déjà plus de 10 pour cent du nombre total d'actions de la compagnie assorties du droit de vote, émises et en circulation;
- d) de porter à plus de 10, alors qu'il est égal ou inférieur à ce chiffre, le pourcentage de ces actions détenues par un non-résident et les actionnaires qui ont des liens avec lui, le cas échéant, par rapport au nombre total d'actions émises et en circulation.

- Exception (2) Notwithstanding subsection (1), the directors of a provincial corporation may allow in the securities register of the corporation the entry of a transfer of any voting shares of the corporation to a non-resident when it is shown to the directors on evidence satisfactory to them that the share was, immediately before the 17th day of June, 1970, held in the right of or for the use or benefit of the non-resident.
- Allotment to non-resident (3) The directors of a provincial corporation shall not allot, or allow the allotment of any voting shares of the corporation to any non-resident in circumstances where, if the allotment to such non-resident were a transfer of those shares, the entry thereof in the securities register would be required, under subsection (1), to be refused by the directors.
- Offence (4) Default in complying with this section does not affect the validity of a transfer or allotment of voting shares of the provincial corporation that has been entered into the securities register of the corporation, but every director or officer who authorizes or knowingly permits such default is guilty of an offence.
- Voting by non-residents **61.**—(1) Non-residents shall not exercise the voting rights attached to shares of a provincial corporation unless entered in the securities register of the corporation as a shareholder in respect of the shares.
- Voting rights of nominees suspended (2) Where a person who is a resident Canadian or a body corporate that is resident in Canada holds voting shares of a provincial corporation in the right of, or for the use or benefit of, a non-resident and in respect of which the non-resident is not entered in the securities register of the corporation as the holder, the person shall not, either in person or by proxy or by a voting trust, exercise the voting rights pertaining to those shares.
- Change of status while entered on books (3) Where a person who is a resident Canadian or a body corporate that is resident in Canada becomes a non-resident while entered in the securities register of a provincial corporation as a shareholder and the number of voting shares of such person recorded in the securities register when added to those entered therein as owned by other non-residents exceed the limit set out in section 60, the person shall not exercise, in person or by proxy or by a voting trust, any voting rights in respect of its shares that exceed the limit set out in section 60.
- Voting rights of single non-resident owner (4) Where any voting shares of a provincial corporation are held in the name of or in the right of or for the use or benefit of a non-resident, other than shares in respect of which the non-resident was entered in the securities register of the cor-

(2) Malgré le paragraphe (1), les administrateurs de la compagnie provinciale peuvent autoriser l'inscription, au registre de ses valeurs mobilières, du transfert en faveur d'un non-résident d'actions assorties du droit de vote, dans le cas où les administrateurs sont convaincus par des preuves qui leur sont présentées que ces actions étaient, le 17 juin 1970, détenues pour le compte de ce non-résident ou à son usage et profit.

Exception

(3) Les administrateurs de la compagnie provinciale ne doivent pas attribuer ou permettre l'attribution à un non-résident d'actions de la compagnie assorties du droit de vote lorsque, si cette attribution équivalait à un transfert des actions, ceux-ci seraient tenus aux termes du paragraphe (1) de refuser l'inscription de ce transfert dans le registre des valeurs mobilières.

Attribution à un non-résident

(4) Le défaut de se conformer au présent article n'a pas d'incidence sur la validité du transfert ou de l'attribution d'actions de la compagnie provinciale assorties du droit de vote qui a été inscrit au registre de ses valeurs mobilières. Toutefois, l'administrateur ou le dirigeant qui sciemment permet la contravention ou l'autorise est coupable d'une infraction.

Infraction

61 (1) Le non-résident ne peut exercer le droit de vote rattaché aux actions d'une compagnie provinciale, sauf s'il est inscrit au registre des valeurs mobilières de la compagnie à titre de détenteur de ces actions.

Droit de vote des non-résidents

(2) Le particulier qui est résident canadien et la personne morale qui réside au Canada ne peuvent exercer, en personne, par procuration ou en vertu d'une convention de vote fiduciaire, le droit de vote rattaché aux actions assorties du droit de vote d'une compagnie provinciale que ceux-ci détiennent pour le compte d'un non-résident, ou à l'usage ou au profit de ce dernier, lorsque ce non-résident n'est pas inscrit à titre de détenteur de ces actions au registre des valeurs mobilières de la compagnie.

Suspension du droit de vote de l'intermédiaire

(3) Le particulier qui est résident canadien ou la personne morale qui réside au Canada qui deviennent non-résidents lorsqu'ils sont des actionnaires inscrits au registre des valeurs mobilières de la compagnie provinciale, ne peuvent exercer en personne, par procuration ou en vertu d'une convention de vote fiduciaire le droit de vote rattaché à leurs actions, dans la mesure où le nombre de ces actions, ajouté au montant des actions déjà inscrites au nom de non-résidents, dépasse la limite fixée à l'article 60.

Changement de statut en cours d'inscription

(4) Nul ne doit, en personne, par procuration ou en vertu d'une convention de vote fiduciaire, exercer le droit de vote rattaché aux actions d'une compagnie provinciale détenues par un non-résident, en son nom, pour son compte, à son

Droits de vote du particulier non résident

poration before the 17th day of June, 1970 or is entered in the securities register under subsection 60 (2), no person shall, either as proxy or by a voting trust or in person, exercise the voting rights pertaining to such shares held in the non-resident's name or in the non-resident's right or for the non-resident's use or benefit, if the total of such shares so held, together with such shares held in the name or right of or for the use or benefit of,

- (a) any shareholders associated with the non-resident; or
- (b) any persons who would be deemed to be shareholders associated with the non-resident were such persons and the non-resident themselves shareholders,

exceed in number 10 per cent of the issued and outstanding voting shares.

Offence

(5) Every person who knowingly contravenes this section is guilty of an offence.

Effect of
contravention

(6) No proceeding, matter or thing at a general meeting of a provincial corporation is void by reason only of a contravention of this section, but any such proceeding, matter or thing is, at any time within one year from the day of commencement of the general meeting at which the contravention occurred, voidable at the option of the shareholders by a special resolution.

Deemed
holding
body
corporate

62. For the purposes of sections 63, 64 and 68, a body corporate, individual or trust that, by itself or with any body corporate, individual or trust related to it, if any, holds or controls 10 per cent or more of the total number of issued and outstanding shares of a class of voting shares of a corporation shall be deemed to be a holding body corporate and the shares and the issue or transfer of shares of the holding body corporate shall be deemed to be shares or a transfer or issue of shares to which the said sections 63, 64 and 68 apply.

Consent of
Superin-
tendent

63.—(1) No transfer or issue of voting shares of a provincial corporation shall be entered in its securities register until the consent of the Superintendent has been received by the corporation, if,

- (a) when the total number of shares of a class of voting shares of the corporation held by a person and by other shareholders related to the person, if any, exceeds 10 per cent of the total number of the

usage ou à son profit, à l'exception des actions qui étaient, soit antérieurement au 17 juin 1970, soit aux termes du paragraphe 60 (2), inscrites à son nom dans le registre des valeurs mobilières. Cette disposition s'applique lorsque le montant des actions ainsi détenues, ajouté aux actions détenues au nom, pour le compte ou à l'usage ou au profit :

- a) des actionnaires qui ont des liens avec le non-résident;
- b) des personnes qui seraient réputées avoir des liens avec lui si celles-ci ainsi que le non-résident étaient eux-mêmes actionnaires,

représente en nombre plus de 10 pour cent des actions assorties du droit de vote, émises et en circulation.

(5) Toute personne qui sciemment contrevient au présent article est coupable d'une infraction. Infraction

(6) Les actes, affaires ou objets faits ou accomplis lors de l'assemblée générale de la compagnie provinciale ne sont pas invalides pour le seul motif qu'il y a eu contravention au présent article. Ceux-ci sont toutefois susceptibles d'annulation, au choix des actionnaires, au cours de l'année qui suit le jour du début de l'assemblée générale au cours de laquelle s'est produite la contravention. L'annulation se fait par voie de résolution spéciale. Effets de la contravention

62 Pour l'application des articles 63, 64 et 68, sont réputés des personnes morales mères la personne morale, le particulier ou la fiducie qui, à eux seuls ou de concert avec une personne morale, un particulier ou une fiducie qui leur sont liés, détiennent 10 pour cent ou plus du nombre total d'actions émises et en circulation d'une catégorie quelconque d'actions d'une compagnie assorties du droit de vote, ou en ont le contrôle. Les actions ainsi que l'émission et le transfert des actions de la personne morale mère sont alors réputés subordonnés à l'application des articles 63, 64 et 68. Personne morale mère réputée

63 (1) Jusqu'à ce que le consentement du surintendant ait été reçu, il ne peut être inscrit au registre des valeurs mobilières de la compagnie provinciale aucun transfert ni émission de ses actions assorties du droit de vote, si ce transfert ou cette émission devait avoir pour effet : Consentement du surintendant

- a) d'augmenter le pourcentage d'une catégorie donnée de ces actions détenues par cette personne et par les actionnaires qui lui sont liés, le cas échéant, lorsque leur nombre représente déjà plus de 10 pour cent

issued and outstanding shares of that class, the transfer or issue would increase the percentage of shares of that class held by such person; or

- (b) when the total number of shares of a class of voting shares of the provincial corporation held by a person and by other shareholders related to the person, if any, is 10 per cent or less of the total number of issued and outstanding shares of that class, the transfer or issue would cause the total number of shares of that class held by such person and by other shareholders related to the person, if any, to exceed 10 per cent of the issued and outstanding shares of that class,

and until the consent of the Superintendent is received by the corporation, no person shall, in person or by proxy, exercise the voting rights pertaining to any of the voting shares that are held by or in the name of the shareholder or by or in the name of any person related to the shareholder.

Application
to
Superin-
tendent

(2) A person to whom shares are to be transferred or issued in circumstances that require the consent of the Superintendent may apply for the consent and, for the purposes of the application, the person shall provide the Superintendent with such information as the Superintendent may request.

Refusal of
consent

(3) On an application under subsection (2), the Superintendent may refuse consent where, in his or her opinion, it would be in the public interest to do so and, without limiting the generality of the foregoing, the Superintendent may refuse consent where the shareholder or any person related to the shareholder,

- (a) is or has been bankrupt;
- (b) has been convicted of a criminal offence, an offence under this Act or an offence under the *Securities Act*;
- (c) is or has been subject to a cease trading order under the *Securities Act*;
- (d) is the subject of an examination under section 184 or an investigation under section 204;
- (e) is contravening any provision of this Act or the regulations or of any comparable legislation of another jurisdiction or of any undertaking given to the Superintendent; or

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du nombre total d'actions de cette catégorie émises et en circulation;

- b) de porter à plus de 10, lorsqu'il est égal ou inférieur à ce chiffre, le pourcentage des actions de cette catégorie détenues par cette personne et les actionnaires qui lui sont liées, le cas échéant, par rapport au nombre total d'actions de cette catégorie, émises et en circulation.

Jusqu'à ce que le consentement ait été reçu, nul ne peut non plus, en personne ou par procuration, exercer le droit de vote rattaché aux actions détenues par l'actionnaire ou la personne qui lui est liée, ou en leurs noms.

(2) La personne en faveur de qui des actions doivent être transférées ou émises dans des circonstances où le consentement du surintendant est requis peut s'adresser à ce dernier en vue d'obtenir ce consentement, et lui fournit à cette fin les renseignements qu'il peut exiger.

Demande
adressée au
surintendant

(3) Le surintendant peut refuser de consentir à la demande visée au paragraphe (2) si, à son avis, il en va de l'intérêt public, notamment si l'actionnaire ou la personne qui est liée à lui :

Consentement
refusé

- a) a ou a déjà eu le statut de failli;
- b) a été reconnu coupable d'une infraction criminelle ou d'une infraction à la présente loi ou à la *Loi sur les valeurs mobilières*;
- c) a fait l'objet d'une ordonnance d'interdiction d'opération aux termes de la *Loi sur les valeurs mobilières*;
- d) fait l'objet d'un examen aux termes de l'article 184 ou d'une enquête aux termes de l'article 204;
- e) contrevient à une disposition de la présente loi, des règlements, d'une loi semblable d'une autre compétence législative, ou d'un engagement pris envers le surintendant;

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- (f) has failed to provide the information requested under subsection (2).

Effective
date of
consent

(4) The consent of the Superintendent under this section takes effect on the date set out in the consent and the effective date may be a date before the date the consent is given.

Declaration
may be
required

64. The Superintendent may in writing direct a provincial corporation to obtain from any person in whose name a share of the corporation is held or beneficially owned a declaration containing information,

- (a) concerning the ownership or beneficial ownership of such share;
- (b) as to whether such share is held or beneficially owned by a person who is related to any other person and the name of that other person where applicable;
- (c) concerning the ownership or beneficial ownership of the shares of a holding body corporate; and
- (d) concerning such other matters as are specified by the Superintendent,

and as soon as possible after the receipt of a direction from the Superintendent under this section, the directors of the corporation shall comply therewith and every person who is requested by the corporation to provide a declaration in the prescribed form containing information referred to in this subsection shall forthwith comply with the request by submitting the completed declaration to the Superintendent.

Hearing

65.—(1) Where the Superintendent proposes to refuse consent under section 63, he or she shall forthwith advise the applicant and shall give the applicant an opportunity to be heard before him or her.

Power of
L.G. in C.

(2) Upon the petition of the applicant, filed with the Clerk of the Executive Council within twenty-eight days after the date of the decision of the Superintendent to refuse consent under section 63, the Lieutenant Governor in Council may,

- (a) confirm, vary or rescind the whole or any part of such decision; or
- (b) require the Superintendent to hold a new hearing of the whole or any part of the application to the

- f) n'a pas fourni les renseignements exigés aux termes du paragraphe (2).

(4) Le consentement du surintendant aux termes du présent article prend effet à la date précisée dans le document, qui peut être antérieure à la date du consentement.

Date de prise
d'effet du
consentement

64 Le surintendant peut ordonner par écrit à une compagnie provinciale d'obtenir de la personne propriétaire bénéficiaire d'une action ou de la personne qui détient une action pour le compte d'autrui un relevé qui reproduit des renseignements ayant trait :

Relevé exigé

- a) à la propriété ou au droit de propriété à titre bénéficiaire de l'action;
- b) au fait que l'action est détenue ou que le droit de propriété à titre bénéficiaire est exercé par une personne liée à une autre personne, et le nom de cette autre personne, le cas échéant;
- c) à la propriété ou au droit de propriété à titre bénéficiaire des actions d'une personne morale mère;
- d) aux autres points que précise le surintendant.

Les administrateurs se conforment aux instructions du surintendant aux termes du présent article, dès leur réception. Chaque personne à qui la compagnie demande de présenter, selon la formule prescrite, le relevé des renseignements visés à ce paragraphe, se conforme sans délai à la demande et dépose ce relevé auprès du surintendant.

65 (1) Si le surintendant a l'intention de refuser son consentement aux termes de l'article 63, il en notifie sans délai l'auteur de la demande et lui fournit l'occasion de se faire entendre.

Audience

(2) Sur pétition de l'auteur de la demande déposée auprès du greffier du Conseil des ministres dans les vingt-huit jours de la décision du surintendant de refuser son consentement aux termes de l'article 63, le lieutenant-gouverneur en conseil peut :

Pouvoirs du
lieutenant-
gouverneur
en conseil

- a) confirmer, modifier ou annuler la décision, en totalité ou en partie;
- b) enjoindre au surintendant de tenir une nouvelle

Superintendent upon which such decision of the Superintendent was made.

Idem

(3) The decision of the Superintendent after the hearing under clause (2) (b) is not subject to petition under this section.

Decision
final

(4) Except as provided in subsection (2), a decision of the Superintendent to refuse consent under section 63 is final and binding and no such decision or decision as confirmed or varied under subsection (2) shall be stayed, varied or set aside by any court.

Exemption

66. The Superintendent, with the approval of the Lieutenant Governor in Council, may by order exempt any corporation or other person from the application of sections 63 to 65, in whole or in part, on such terms and conditions as are set out in the order and where any such order is filed with the corporation named in the order, it shall be deemed to be a consent of the Superintendent for the purpose of section 63, so long as the terms and conditions of the order have been complied with.

Transfer
valid only
after entry

67.—(1) No transfer of shares of a provincial corporation, unless made by a sale under execution or under the order or judgment of a court of competent jurisdiction, is valid for any purpose until the transfer has been entered in the securities register of the corporation.

Exceptions

(2) Notwithstanding subsection (1), a transfer of shares that has not been entered in the securities register of a provincial corporation is valid for the purpose of showing the rights as between the parties to the transfer.

By-laws

68.—(1) The directors of a provincial corporation may make by-laws,

- (a) requiring any person holding any voting share of the corporation to submit written declarations,
 - (i) with respect to the ownership of a share of the corporation or of the holding body corporate,
 - (ii) with respect to the place in which the shareholder and any person for whose use or benefit the share is held are ordinarily resident,

audience concernant la totalité ou une partie de la demande visée par la décision du surintendant.

(3) La décision du surintendant rendue après l'audience tenue aux termes de l'alinéa (2) b) ne peut faire l'objet d'une pétition aux termes du présent article. Idem

(4) Sous réserve du paragraphe (2), la décision du surintendant de refuser son consentement aux termes de l'article 63 est définitive et lie les parties. Elle ne peut non plus, dans sa forme originale ou confirmée ou modifiée en vertu du paragraphe (2), faire l'objet d'un sursis, de modifications ou d'annulation de la part d'aucun tribunal. Décision définitive

66 Le surintendant, avec l'approbation du lieutenant-gouverneur en conseil, peut prendre une ordonnance en vue de soustraire en tout ou en partie la compagnie ou une autre personne à l'application des articles 63 à 65, selon les conditions qui y sont précisées. Cette ordonnance, déposée auprès de la compagnie qui y est nommée, est réputée, tant que les conditions qui s'y rattachent ont été respectées, constituer le consentement du surintendant pour l'application de l'article 63. Dispense

67 (1) Le transfert d'actions d'une compagnie provinciale, sauf le transfert effectué lors de la saisie-exécution ou de la vente en justice ordonnée par le tribunal compétent, ne vaut que s'il est inscrit au registre des valeurs mobilières de la compagnie. Inscription nécessaire à la validité

(2) Malgré le paragraphe (1), le transfert d'actions dont l'inscription ne figure pas aux registres des valeurs mobilières de la compagnie provinciale vaut entre les parties au transfert. Exceptions

68 (1) Les administrateurs de la compagnie provinciale peuvent, par règlement intérieur : Règlement intérieur

- a) exiger de la personne qui détient quelque action de la compagnie assortie du droit de vote de déposer par écrit des relevés concernant :
 - (i) la propriété d'une action de la compagnie ou de sa personne morale mère,
 - (ii) l'endroit où résident ordinairement l'actionnaire et la personne, le cas échéant, à l'usage ou au profit de laquelle l'action est détenue,
 - (iii) l'existence de liens entre deux actionnaires ou le fait que ceux-ci soient liés,

- (iii) as to whether the shareholder is associated with or related to any other shareholder, and
- (iv) with respect to such other matters as the directors consider relevant for the purposes of sections 60 to 67;
- (b) prescribing the times at which and the manner in which any declarations required under clause (a) are to be submitted; and
- (c) requiring any person desiring to have a transfer of a share to the person entered in the securities register of the corporation to submit such a declaration as may be required under this section in the case of a shareholder.

Where
declaration
pending

(2) Where under any by-law made under subsection (1), any declaration is required to be submitted by any shareholder or person in respect of the transfer of any share, the directors may prohibit the entry of the transfer in the securities register of the corporation until the required declaration has been submitted.

Liability of
directors, etc.

69. In determining, for the purposes of whether a person is a resident Canadian, body corporate resident in Canada or a non-resident, by whom a body corporate is controlled or any other circumstances relevant to the performance of their duties under sections 60 to 67, the directors of the provincial corporation and any other person acting as proxy for a shareholder of the provincial corporation may rely upon any statement made in any declarations made pursuant to a by-law made under subsection 68 (1) or rely upon their own knowledge of the circumstances, and the directors and any such person are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.

Shareholders
liability
limited

70. Except as otherwise provided in this Act, the shareholders of a provincial corporation are not, as shareholders, liable for any act, default, obligation or liability of the corporation.

Place of
meetings

71. Subject to the by-laws, a meeting of shareholders of a provincial corporation shall be held at such place in Canada as the directors determine or, in the absence of such a determination, at its principal place of business.

Shareholders
meeting

72. The directors of a provincial corporation,

- (a) shall call an annual meeting of shareholders not later than three months after the corporation comes into existence and subsequently not later than three

- (iv) les autres points que les administrateurs jugent pertinents pour l'application des articles 60 à 67;
- b) prescrire les moments et le mode de présentation des relevés visés à l'alinéa a);
- c) exiger de la personne qui désire que le transfert d'une action en sa faveur soit inscrite au registre des valeurs mobilières de la compagnie que celle-ci présente le relevé qui peut être exigé de l'actionnaire en vertu du présent article.

(2) Les administrateurs peuvent interdire l'inscription du transfert au registre des valeurs mobilières de la compagnie jusqu'à ce qu'ait été présenté le relevé exigé de l'actionnaire ou d'une autre personne relativement au transfert d'une action aux termes du règlement intérieur pris en application du paragraphe (1).

Relevé à recevoir

69 Afin de déterminer le statut de résident canadien ou de non-résident d'une personne physique ou morale qui contrôle une personne morale ou d'autres faits relatifs à l'exécution de leurs obligations aux termes des articles 60 à 67, les administrateurs de la compagnie provinciale et le fondé de pouvoir de son actionnaire peuvent se fier aux relevés dressés conformément au règlement intérieur pris en application du paragraphe 68 (1), ou à leur connaissance personnelle des faits. Les administrateurs et les fondés de pouvoir ne peuvent, lors d'une poursuite, être tenus responsables des actes qu'ils ont accomplis ou omis de faire de bonne foi en appliquant les conclusions tirées de ces relevés ou fondées sur cette connaissance.

Responsabilité des administrateurs, etc.

70 Sauf disposition contraire de la présente loi, les actionnaires de la compagnie provinciale ne sont pas, à ce titre, responsables de ses obligations, actes ou omissions.

Responsabilité limitée des actionnaires

71 Sous réserve du règlement intérieur, les assemblées des actionnaires d'une compagnie provinciale se tiennent à l'endroit au Canada que fixent les administrateurs, ou à défaut, à l'endroit où est situé l'établissement principal.

Lieu des assemblées

72 Les administrateurs de la compagnie provinciale :

Assemblée des actionnaires

- a) convoquent une assemblée annuelle des actionnaires au plus tard dans les trois mois de la création de

months after each fiscal year end of the corporation; and

- (b) may call a special meeting of shareholders at any time.

Record date

73.—(1) For the purpose of determining shareholders,

- (a) entitled to receive payment of a dividend;
- (b) entitled to participate in a liquidation or distribution; or
- (c) for any other purpose except the right to receive notice of or to vote at a meeting,

the directors may fix in advance a date as the record date for such determination of shareholders, but the record date shall not precede by more than fifty days the particular action to be taken.

Idem

(2) For the purpose of determining shareholders entitled to receive notice of a meeting of shareholders, the directors may fix in advance a date as the record date for such determination of shareholders, but the record date shall not precede by more than fifty days or by less than twenty-one days the date on which the meeting is to be held.

Where no
date fixed

(3) Where no record date is fixed,

- (a) the record date for the determination of shareholders entitled to receive notice of a meeting of shareholders shall be,
 - (i) at the close of business on the day immediately preceding the day on which the notice is given, or
 - (ii) if no notice is given, the day on which the meeting is held; and
- (b) the record date for the determination of shareholders for any purpose other than to establish a shareholder's right to receive notice of a meeting or to vote shall be at the close of business on the day on which the directors pass the resolution therefor.

Notice of
date

(4) If a record date is fixed, unless notice of the record date is waived in writing by every holder of a share of the class or series affected whose name is set out in the securities register

la compagnie, et, par la suite, au plus tard trois mois après la fin de chaque exercice de la compagnie;

- b) peuvent convoquer des assemblées extraordinaires des actionnaires.

73 (1) Les administrateurs peuvent fixer d'avance une date de clôture des registres qui tombe dans les cinquante jours précédant l'opération en cause, pour déterminer les actionnaires habiles : Date de clôture des registres

- a) à recevoir les dividendes;
- b) à participer à la liquidation ou à la distribution;
- c) à toute autre fin, sauf en matière du droit de recevoir avis d'une assemblée ou d'y voter.

(2) Les administrateurs peuvent fixer d'avance une date de clôture des registres qui tombe entre le cinquantième et le vingt et unième jour précédant une assemblée des actionnaires, pour déterminer les actionnaires habiles à recevoir avis de cette assemblée. Idem

(3) Si la date n'a pas été fixée, constitue la date de clôture des registres pour déterminer les actionnaires : Date non fixée

- a) qui ont le droit de recevoir avis d'une assemblée :
 - (i) le jour précédant celui où cet avis est donné, à l'heure de fermeture des bureaux,
 - (ii) en l'absence d'avis, le jour de l'assemblée;
- b) ayant qualité à toutes fins sauf en ce qui concerne le droit de recevoir avis d'une assemblée ou le droit de vote, la date d'adoption de la résolution à ce sujet par les administrateurs, à l'heure de fermeture des bureaux.

(4) Dans le cas où une date de clôture des registres est fixée par les administrateurs, sauf renonciation écrite à l'avis de cette date par chaque actionnaire de la catégorie ou série Avis de la date

of the corporation at the close of business on the day the directors fix the record date, notice thereof shall be given, not less than seven days before the date so fixed,

- (a) by advertisement in a newspaper published or distributed in the place where the provincial corporation has its principal place of business and in each place in Canada where it has a transfer agent or where a transfer of its shares may be recorded; and
- (b) by written notice to each stock exchange in Canada on which the shares of the corporation are listed for trading.

Notice

74.—(1) Notice of the time and place of a meeting of shareholders shall be sent, in the case of a provincial corporation that is an offering corporation, not less than twenty-one days and, in the case of any other provincial corporation, not less than ten days, but, in either case, not more than fifty days before the meeting to each shareholder entitled to vote at the meeting, to each director and to the auditor.

Idem

(2) A notice of a meeting is not required to be sent to shareholders who were not registered on the securities register of the provincial corporation on the date determined under subsection 73 (2) or (3), but failure to receive a notice does not deprive a shareholder of the right to vote at the meeting.

Adjournment

(3) If a meeting of shareholders is adjourned for less than thirty days, it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting other than by announcement at the earliest meeting that is adjourned.

Idem

(4) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of thirty days or more, notice of the adjourned meeting shall be given as for an original meeting but, unless the meeting is adjourned by one or more adjournments for an aggregate of more than ninety days, section 111 of the *Business Corporations Act, 1982*, as incorporated into this Act by section 86, does not apply.

1982, c. 4

Special
business

(5) All business transacted at a special meeting of shareholders and all business transacted at an annual meeting of shareholders, except consideration of the minutes of an earlier meeting, the financial statements and auditor's report, election of directors and reappointment of the incumbent auditor, shall be deemed to be special business.

visée dont le nom paraît au registre des valeurs mobilières à l'heure de fermeture des bureaux le jour où les administrateurs fixent la date de clôture des registres, l'avis de cette date est donné au moins sept jours avant la date ainsi fixée :

- a) d'une part, dans un journal publié et distribué à l'endroit où est situé l'établissement principal de la compagnie provinciale de même qu'à chaque endroit au Canada où celle-ci a un agent des transferts ou à l'endroit au Canada où le transfert de ses actions peut être inscrit;
- b) d'autre part, au moyen d'un avis écrit envoyé à chaque bourse canadienne où sont cotées ses actions.

74 (1) Un avis des date, heure et lieu de l'assemblée des actionnaires est envoyé, dans le cas d'une compagnie provinciale qui fait appel au public, entre le cinquantième et le vingt et unième jour qui la précèdent, et dans les autres cas entre le cinquantième et le dixième jour, à chaque actionnaire habile à y voter, à chaque administrateur et au vérificateur de la compagnie. Avis

(2) Il n'est pas nécessaire d'envoyer l'avis aux actionnaires non inscrits sur le registre de la compagnie provinciale à la date de référence fixée en vertu des paragraphes 73 (2) ou (3). Toutefois, l'absence d'avis ne prive pas l'actionnaire de son droit de vote. Idem

(3) Sauf disposition contraire du règlement intérieur, il suffit, pour donner avis de l'ajournement d'une assemblée pour une période de moins de trente jours, d'en faire l'annonce lors de l'assemblée initiale. Ajournement

(4) Dans le cas d'ajournement de l'assemblée à plusieurs reprises pour une période totale d'au moins trente jours, l'avis est donné comme pour une nouvelle assemblée. Toutefois, l'article 111 de la *Loi de 1982 sur les compagnies*, incorporé à la présente loi par l'article 86, n'a d'application que dans le cas d'ajournement à une ou plusieurs reprises pour une période totale de plus de quatre-vingt-dix jours. Idem
1982,
chap. 4

(5) Les délibérations des assemblées extraordinaires et annuelles sont réputées des questions spéciales. Font exception à cette règle l'examen du procès-verbal de l'assemblée précédente, des états financiers et du rapport du vérificateur, l'élection des administrateurs de même que le renouvellement du mandat du vérificateur. Questions
spéciales

Idem

(6) Notice of a meeting of shareholders at which special business is to be transacted shall state or be accompanied by a statement of,

- (a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and
- (b) the text of any special resolution or by-law to be submitted to the meeting.

Shareholders
meeting

75. Subject to this Act and the by-laws of a provincial corporation,

- (a) all questions proposed for the consideration of the shareholders shall be determined by the majority of the votes cast and the chairman presiding at the meeting shall not have a second or casting vote in case of an equality of votes;
- (b) the chairman presiding at a meeting of shareholders may, with the consent of the meeting and subject to subsections 74 (3) and (4) and to such conditions as the meeting decides, adjourn the meeting from time to time and from place to place; and
- (c) the president or, in the president's absence, a vice-president who is a director shall preside as chairman at a meeting of shareholders, but, if there is no president or such a vice-president or if at a meeting none of them is present within fifteen minutes after the time appointed for the holding of the meeting, the shareholders present shall choose a person from their number to be the chairman.

Waiving
notice

76. A shareholder and any other person entitled to attend a meeting of shareholders of a provincial corporation may in any manner and at any time waive notice of a meeting of shareholders, and attendance of any such person at a meeting of shareholders is a waiver of notice of the meeting, except where the shareholder attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Proposal

77.—(1) A shareholder of a provincial corporation entitled to vote at a meeting of shareholders may,

- (a) submit to the corporation notice of a proposal; and

(6) L'avis de l'assemblée dont l'ordre du jour comporte des questions spéciales énonce ou est accompagné d'une note énonçant : Idem

- a) leur nature, avec suffisamment de détails pour permettre à l'actionnaire de se faire une idée éclairée de celle-ci;
- b) le texte de la résolution spéciale ou du règlement intérieur devant être soumis à l'assemblée.

75 Sous réserve de la présente loi et du règlement intérieur d'une compagnie provinciale : Assemblée des actionnaires

- a) il est disposé des questions soumises à l'examen des actionnaires de la compagnie provinciale à la majorité des voix exprimées, et le président de l'assemblée n'a pas voix prépondérante en cas de partage des voix;
- b) le président de l'assemblée peut, avec le consentement de l'assemblée, sous réserve des paragraphes 74 (3) et (4), et sous réserve des conditions que l'assemblée impose, l'ajourner et en changer le lieu;
- c) le président, ou en son absence, un vice-président qui est administrateur, préside l'assemblée des actionnaires. Toutefois, en l'absence de ces personnes dans les quinze minutes qui suivent l'heure fixée pour la tenue de l'assemblée, les actionnaires présents choisissent parmi eux un président.

76 Les actionnaires et les autres personnes qui ont le droit d'assister à une assemblée des actionnaires de la compagnie provinciale peuvent, de quelque façon que ce soit et à n'importe quel moment, renoncer à l'avis de convocation. Leur présence à l'assemblée équivaut à une telle renonciation, sauf lorsqu'elles y assistent spécialement pour s'opposer aux délibérations pour le motif que l'assemblée n'est pas régulièrement convoquée. Renonciation à l'avis

77 (1) L'actionnaire de la compagnie provinciale habile à voter lors de l'assemblée des actionnaires peut : Proposition

- a) déposer auprès de la compagnie un avis de proposition;

- (b) discuss at the meeting any matter in respect of which the shareholder would have been entitled to submit a proposal.

Circulating
proposal

1982, c. 4

(2) Where a provincial corporation receives notice of a proposal and the corporation solicits proxies, it shall set out the proposal in the management information circular required by section 112 of the *Business Corporations Act, 1982*, as incorporated into this Act by section 86, or it shall attach the proposal to the information circular.

Statement in
support of
proposal

(3) If so requested by a shareholder giving notice of a proposal, the provincial corporation shall include in the management information circular or attach thereto a statement by the shareholder of not more than two hundred words in support of the proposal along with the name and address of the shareholder.

Proposal may
include
nominations

(4) A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares representing in the aggregate not less than 5 per cent of the shares or 5 per cent of the shares of a class or series of shares of the corporation entitled to vote at the meeting to which the proposal is to be presented, but this subsection does not preclude nominations being made at a meeting of shareholders.

Where subss.
(2, 3) do
not apply

(5) A provincial corporation is not required to comply with subsections (2) and (3) where,

- (a) the proposal is not submitted to the corporation at least sixty days before the anniversary date of the last annual meeting, if the matter is proposed to be raised at an annual meeting, or at least sixty days before a meeting other than the annual meeting, if the matter is proposed to be raised at a meeting other than the annual meeting;
- (b) it clearly appears that the proposal is submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the corporation or any of its directors, officers or security holders, or for a purpose that is not related in any significant way to the business or affairs of the corporation;
- (c) the corporation, at the shareholder's request, included a proposal in a management information circular relating to a meeting of shareholders held within two years preceding the receipt of the

- b) discuter au cours de cette assemblée des questions qui auraient pu faire l'objet d'une proposition de sa part.

(2) La compagnie provinciale qui reçoit un avis de proposition et sollicite des procurations fait figurer la proposition dans la circulaire d'information de la direction exigée par l'article 112 de la *Loi de 1982 sur les compagnies*, incorporé à la présente loi par l'article 86, ou la fait annexer à la circulaire.

Diffusion de la proposition

1982, chap. 4

(3) À la demande de l'actionnaire qui donne l'avis de proposition, la compagnie provinciale inclut dans la circulaire d'information de la direction ou annexe à la circulaire un exposé d'au plus deux cents mots préparé par celui-ci à l'appui de la proposition, de même que ses nom et adresse.

Déclaration à l'appui de la proposition

(4) La proposition peut faire état de candidatures en vue de l'élection des administrateurs, si elle est signée par un ou plusieurs actionnaires détenant ensemble au moins 5 pour cent des actions ou de celles d'une catégorie ou série donnant le droit de vote lors de l'assemblée à laquelle les propositions doivent être présentées. Le présent paragraphe n'empêche toutefois pas la présentation de candidatures au cours de l'assemblée.

La proposition peut faire état des candidatures

(5) La compagnie provinciale n'est pas tenue de se conformer aux paragraphes (2) et (3) :

Non-application des par. (2) et (3)

- a) si la proposition ne lui est pas soumise au moins soixante jours avant l'expiration d'un délai d'un an à compter de la dernière assemblée annuelle lorsque la question doit être soulevée lors de l'assemblée annuelle, ou au moins soixante jours au préalable dans les autres cas;
- b) s'il apparaît nettement que la proposition a pour objet principal, soit une demande personnelle ou le redressement d'un grief personnel contre la compagnie ou l'un de ses administrateurs, dirigeants ou détenteurs de valeurs mobilières, soit une question qui n'a aucun lien important avec les affaires de la compagnie;
- c) si au cours des deux ans précédant la réception de sa demande, l'actionnaire avait omis de présenter à l'assemblée, en personne ou par son fondé de pouvoir, une proposition que la compagnie avait fait

request, and the shareholder failed to present the proposal, in person or by proxy, at the meeting; or

- (d) substantially the same proposal was submitted to shareholders in a management information circular or a dissident's information circular relating to a meeting of shareholders held within two years preceding the receipt of the shareholder's request and the proposal was defeated.

Where no liability

(6) No provincial corporation or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this section.

Where refusal to circulate proposal

(7) Where a provincial corporation refuses to include a proposal in a management information circular, it shall, within ten days after receiving the proposal, send notice to the shareholder submitting the proposal of its intention to omit the proposal from the management information circular and send to the shareholder a statement of reasons for the refusal.

Application to Court

(8) Upon the application of a shareholder aggrieved by a provincial corporation's refusal under subsection (7), the High Court of Justice may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.

Idem

(9) The provincial corporation or any person aggrieved by a proposal may apply to the High Court of Justice for an order permitting the provincial corporation to omit the proposal from the management information circular, and the court, if it is satisfied that subsection (5) applies, may make such order as it thinks fit.

Notice to Superintendent

(10) An applicant under subsection (8) or (9) shall give the Superintendent notice of the application and the Superintendent is entitled to appear and be heard in person or by counsel.

Definition

(11) In this section, "proposal" means a matter that a shareholder entitled to vote proposes to raise at a meeting of shareholders.

Lists of shareholders

78.—(1) A provincial corporation shall prepare a list of shareholders entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder, which list shall be prepared,

- (a) if a record date is fixed under subsection 73 (2), not later than ten days after such record date; or

figurer, à sa demande, dans une circulaire d'information de la direction relative à cette assemblée;

- d) si une proposition à peu près identique a été soumise aux actionnaires dans une circulaire d'information de la direction, ou une circulaire d'information d'un dissident, relative à une assemblée qui a eu lieu dans les deux ans précédant la réception de la demande de l'actionnaire, et a été rejetée.

(6) La compagnie provinciale ou ses mandataires n'engagent pas leur responsabilité pour le seul motif qu'ils diffusent une proposition ou un exposé conformément au présent article. Responsabilité

(7) La compagnie provinciale qui refuse d'inclure une proposition dans la circulaire d'information de la direction fait parvenir à l'actionnaire qui l'a soumise, dans les dix jours de sa réception, un avis exposant les motifs de son refus. Refus de diffuser la proposition

(8) À la requête de l'actionnaire lésé par le refus de la compagnie provinciale communiqué aux termes du paragraphe (7), la Haute Cour peut interdire la tenue de l'assemblée au cours de laquelle on tente de présenter la proposition, et peut rendre l'ordonnance additionnelle qu'elle estime pertinente. Requête

(9) La compagnie provinciale ou toute personne lésée par une proposition peut demander à la Haute Cour, par voie de requête, de rendre une ordonnance autorisant la compagnie à omettre cette proposition de la circulaire d'information de la direction. Le tribunal peut rendre l'ordonnance qu'il estime pertinente s'il est convaincu que le paragraphe (5) s'applique. Idem

(10) L'auteur de la requête présentée aux termes des paragraphes (8) ou (9) en donne avis au surintendant. Celui-ci peut comparaître et se faire entendre en personne ou par l'intermédiaire d'un avocat. Avis au surintendant

(11) Dans le présent article, «proposition» s'entend de toute question qu'un actionnaire qui a le droit de voter se propose de soulever lors d'une assemblée des actionnaires. Définition «proposals»

78 (1) La compagnie provinciale dresse une liste alphabétique des actionnaires qui ont le droit de recevoir avis des assemblées, en y mentionnant le nombre d'actions détenues par chacun : Liste des actionnaires

- a) dans les dix jours suivant la date de clôture des registres, si elle est fixée en vertu du paragraphe 73 (2);

- (b) if no record date is fixed,
 - (i) at the close of business on the day immediately preceding the day on which notice is given, or
 - (ii) where no notice is given, on the day on which the meeting is held.

Entitlement
to vote

(2) Where a provincial corporation fixes a record date under subsection 73 (2), a person named in the list prepared under clause (1) (a), subject to sections 59 to 67, is entitled to vote the shares shown opposite the person's name at the meeting to which the list relates, except to the extent that,

- (a) the person has transferred any of the shares after the record date; and
- (b) the transferee of those shares,
 - (i) produces properly endorsed share certificates, or
 - (ii) otherwise establishes ownership of the shares,

and demands, not later than ten days before the meeting, or such shorter period before the meeting as the by-laws of the corporation may provide, that the transferee's name be included in the list before the meeting,

in which case the transferee is entitled to vote those shares at the meeting.

Idem

(3) Where a provincial corporation does not fix a record date under subsection 73 (2), a person named in a list prepared under clause (1) (b), is subject to sections 59 to 67, entitled to vote the shares shown opposite the person's name at the meeting to which the list relates, except to the extent that,

- (a) the person has transferred any of the shares after the date on which the list prepared under clause (1) (b) was prepared; and
- (b) the transferee of those shares,
 - (i) produces properly endorsed share certificates, or

b) à défaut d'une date de clôture des registres :

(i) à l'heure de fermeture des bureaux, la veille du jour de l'avis,

(ii) en l'absence d'avis, le jour de l'assemblée.

(2) Si la compagnie provinciale fixe une date de clôture des registres aux termes du paragraphe 73 (2), les personnes inscrites sur la liste établie aux termes de l'alinéa (1) a) sont, sous réserve des articles 59 à 67, habiles à exercer, à l'assemblée visée par la liste, le droit de vote rattaché aux actions qui figurent en regard de leur nom. Toutefois, le cessionnaire de ces actions peut exercer ce droit dans la mesure où :

Droit de vote

a) d'une part, la cession est postérieure à la date de clôture des registres;

b) d'autre part, le cessionnaire :

(i) ou bien produit les certificats d'actions régulièrement endossés,

(ii) ou bien fait d'une autre façon la preuve de son titre,

et exige, au moins dix jours avant l'assemblée ou dans le délai plus court établi par le règlement intérieur de la compagnie, l'inscription de son nom sur la liste.

(3) Si la compagnie provinciale ne fixe aucune date de clôture des registres aux termes du paragraphe 73 (2), les personnes inscrites sur la liste établie aux termes de l'alinéa (1) b) sont, sous réserve des articles 59 à 67, habiles à exercer, à l'assemblée visée par la liste, le droit de vote rattaché aux actions qui figurent en regard de leur nom. Toutefois, le cessionnaire de ces actions peut exercer ce droit dans la mesure où :

Idem

a) d'une part, la cession est postérieure à la date à laquelle la liste établie aux termes de l'alinéa (1) b) a été dressée;

b) d'autre part, le cessionnaire :

(i) ou bien produit les certificats d'actions régulièrement endossés,

(ii) otherwise establishes ownership of the shares,

and demands, not later than ten days before the meeting, or such shorter period before the meeting as the by-laws of the corporation may provide, that the transferee's name be included in the list before the meeting,

in which case the transferee is entitled to vote those shares at the meeting.

Examination
of list

(4) A shareholder of a provincial corporation may examine the list of shareholders,

(a) during usual business hours at the principal place of business of the corporation or at the place where its securities register is maintained; and

(b) at the meeting of shareholders for which the list was prepared.

Quorum

79.—(1) Unless the by-laws otherwise provide, the holders of a majority of the shares entitled to vote at a meeting of shareholders, whether present in person or represented by proxy, constitute a quorum.

Idem

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting notwithstanding that a quorum is not present throughout the meeting.

Idem

(3) If a quorum is not present at the time appointed for a meeting of shareholders, or within such reasonable time thereafter as the shareholders present may determine, the shareholders present may adjourn the meeting to a fixed time and place but may not transact any other business.

Voting rights

80.—(1) Each common share of a provincial corporation entitles the holder thereof to one vote at all meetings of shareholders.

Idem

(2) Unless the instrument of incorporation otherwise provides, shares of a provincial corporation that are not common shares entitle the holder thereof to one vote at all meetings of shareholders.

Representative

(3) Where a body corporate or association is a shareholder of a provincial corporation, the provincial corporation shall recognize any individual authorized by a resolution of the

- (ii) ou bien fait d'une autre façon la preuve de son titre,

et exige au moins dix jours avant l'assemblée ou dans le délai plus court établi par le règlement intérieur de la compagnie, l'inscription de son nom sur la liste.

(4) L'actionnaire d'une compagnie provinciale peut consulter la liste des actionnaires : Consultation de la liste

- a) pendant les heures de bureau à l'établissement principal de la compagnie ou à l'endroit où est situé son registre des valeurs mobilières;
- b) lors de l'assemblée des actionnaires pour laquelle la liste a été préparée.

79 (1) Sauf disposition contraire du règlement intérieur, le quorum est atteint lorsque sont présents ou représentés les détenteurs d'actions disposant de la majorité des voix qui peuvent être exprimées lors d'une assemblée des actionnaires. Quorum

(2) Sauf disposition contraire du règlement intérieur, il suffit que le quorum soit atteint à l'ouverture de l'assemblée pour que les actionnaires présents puissent délibérer. Idem

(3) En l'absence de quorum, à l'ouverture de l'assemblée ou après une période de temps que les actionnaires présents jugent suffisante, ces derniers peuvent ajourner l'assemblée à une date, une heure et un lieu précis, mais ne peuvent autrement délibérer. Idem

80 (1) Chaque action ordinaire de la compagnie provinciale donne au détenteur le droit d'exprimer une voix aux assemblées des actionnaires. Droit de vote

(2) Sauf disposition contraire de l'acte constitutif, chaque action de la compagnie provinciale qui n'est pas une action ordinaire donne au détenteur le droit d'exprimer une voix aux assemblées des actionnaires. Idem

(3) La compagnie provinciale qui compte parmi ses actionnaires une personne morale ou une association permet au particulier autorisé à cette fin par résolution des administrateurs ou de la direction de la personne morale ou de l'association de la représenter aux assemblées des actionnaires. Représentant

directors or governing body of the body corporate or association to represent it at meetings of shareholders of the provincial corporation.

Idem

(4) An individual authorized as set out in subsection (3) may exercise on behalf of the body corporate or association he or she represents all the powers it could exercise if it were an individual shareholder.

Joint
shareholders

(5) Unless the by-laws otherwise provide, where two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may in the absence of the others vote the shares, but if two or more of those persons are present, in person or by proxy, they shall vote as one on the shares jointly held by them.

Method of
voting

81.—(1) Unless the by-laws otherwise provide, voting at a meeting of shareholders shall be by show of hands, except where a ballot is demanded by a shareholder or proxyholder entitled to vote at the meeting.

Idem

(2) A shareholder or proxyholder may demand a ballot either before or after any vote by show of hands.

Entry in
minutes

(3) Unless a ballot is demanded, an entry in the minutes of a meeting of shareholders to the effect that the chairman declared a motion to be carried is admissible in evidence as *prima facie* proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the motion.

Effect of
signed
resolutions

82.—(1) Except for a resolution in relation to which a written statement is submitted by a director under subsection 96 (2) or in relation to which representations in writing are submitted by an auditor under subsection 112 (6),

- (a) a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders; and
- (b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to that meeting of shareholders.

Copy of
resolution
kept with
minutes

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meeting of shareholders.

(4) Le particulier accrédité aux termes du paragraphe (3) Idem peut exercer, pour le compte de la personne morale ou de l'association qu'il représente, tous les pouvoirs que cette dernière pourrait exercer à titre d'actionnaire si elle était un particulier.

(5) Sauf disposition contraire du règlement intérieur, si plusieurs personnes détiennent des actions en commun, le codétenteur présent à une assemblée peut, en l'absence des autres, exercer le droit de vote rattaché aux actions. Si plusieurs codétenteurs sont présents ou représentés, ils votent comme un seul actionnaire en ce qui concerne les actions détenues en commun. Codétenteurs

81 (1) Sauf disposition contraire du règlement intérieur, le vote lors d'une assemblée des actionnaires se fait à main levée ou, à la demande de tout actionnaire ou fondé de pouvoir habile à voter, au scrutin. Vote

(2) Les actionnaires ou les fondés de pouvoir peuvent demander un vote au scrutin avant ou après tout vote à main levée. Idem

(3) Sauf si le vote au scrutin est demandé, l'inscription au procès-verbal de l'assemblée des actionnaires selon laquelle le président a déclaré une proposition adoptée est recevable comme preuve *prima facie* de son adoption sans qu'il soit nécessaire de prouver le nombre de voix favorables ou dissidentes. Inscription au procès-verbal

82 (1) Sauf s'il s'agit d'une résolution relativement à laquelle une déclaration écrite a été présentée par un administrateur aux termes du paragraphe 96 (2) ou des observations ont été présentées par écrit par le vérificateur aux termes du paragraphe 112 (6) : La résolution tient lieu d'assemblée

- a) la résolution écrite signée de tous les actionnaires habiles à voter sur la résolution lors d'une assemblée des actionnaires a la même valeur que si elle avait été adoptée lors d'une telle assemblée;
- b) la résolution écrite portant sur toutes les questions qui doivent, selon la présente loi, être traitées lors d'une assemblée des actionnaires et signée par tous les actionnaires habiles à voter lors de cette assemblée, répond aux conditions de la présente loi relatives à cette assemblée.

(2) Un exemplaire des résolutions visées au paragraphe (1) est conservé avec les procès-verbaux des assemblées. Exemplaire de la résolution conservée avec les procès-verbaux

Requisition
for
shareholders
meeting

83.—(1) On notice to the Superintendent, the holders of not less than 5 per cent of the issued shares of a provincial corporation that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

Idem

(2) The requisition referred to in subsection (1) shall state the business to be transacted at the meeting and shall be sent to the principal place of business of the corporation.

Duty of
directors to
call meeting

(3) Upon receiving the requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact the business stated in the requisition unless,

- (a) a record date has been fixed under subsection 73 (2) and notice thereof has been given under subsection 73 (4);
- (b) the directors have called a meeting of shareholders and have given notice thereof under section 74; or
- (c) the business of the meeting as stated in the requisition includes matters described in clauses 77 (5) (b), (c) and (d).

Where
requisitioner
may call
meeting

(4) Subject to subsection (3), if the directors do not within twenty-one days after receiving the requisition referred to in subsection (1) call a meeting, any shareholder who signed the requisition may call a meeting.

Calling of
meeting

(5) A meeting called under this section shall be called as nearly as possible in the manner in which meetings are to be called under the by-laws and this Part.

Repayment
of
expenses

(6) The provincial corporation shall reimburse the shareholders for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting unless the shareholders have not acted in good faith and in the interest of the shareholders of the corporation generally.

Requisition
to Court

84.—(1) If for any reason it is impracticable to call a meeting of shareholders of a provincial corporation in the manner in which meetings of those shareholders may be called or to conduct the meeting in the manner prescribed by the by-laws and this Act, or if for any other reason the High Court of Justice thinks fit, the court, upon the application of a director or a shareholder entitled to vote at the meeting, may order a meeting to be called, held and conducted in such manner as the court directs and upon such terms as to security for the

83 (1) Après en avoir notifié le surintendant, les détenteurs d'au moins 5 pour cent des actions émises par la compagnie provinciale et ayant le droit de vote à l'assemblée dont la tenue est demandée peuvent exiger des administrateurs la convocation d'une assemblée aux fins énoncées dans la demande.

Demande de convocation

(2) La demande visée au paragraphe (1) énonce les questions devant être traitées lors de l'assemblée et est envoyée à l'établissement principal de la compagnie.

Idem

(3) Les administrateurs convoquent une assemblée dès réception de la demande visée au paragraphe (1), pour délibérer des questions qui y sont énoncées, à moins :

Obligation des administrateurs de convoquer l'assemblée

- a) que l'avis d'une date de clôture des registres fixée aux termes du paragraphe 73 (2) n'ait déjà été donné aux termes du paragraphe 73 (4);
- b) qu'ils n'aient déjà convoqué une assemblée et donné l'avis prévu à l'article 74;
- c) que des questions à l'ordre du jour énoncées dans la demande ne portent sur les cas visés aux alinéas 77 (5) b), c) et d).

(4) Sous réserve du paragraphe (3), si les administrateurs ne convoquent pas l'assemblée dans les vingt et un jours suivant la réception de la demande visée au paragraphe (1), tout signataire de la demande peut le faire.

L'auteur de la demande peut convoquer l'assemblée

(5) L'assemblée convoquée aux termes du présent article l'est d'une manière aussi conforme que possible au règlement intérieur et à la présente partie.

Convocation de l'assemblée

(6) Sauf le cas où les actionnaires n'auraient pas agi de bonne foi et dans l'intérêt commun des actionnaires de la compagnie provinciale, celle-ci leur rembourse les frais normaux engagés pour demander, convoquer et tenir l'assemblée.

Remboursement des frais

84 (1) Si elle le juge à propos, notamment dans le cas où il serait impossible pour une raison quelconque de convoquer régulièrement l'assemblée ou de la tenir selon le règlement intérieur ou la présente loi, la Haute Cour peut, à la requête d'un administrateur ou d'un actionnaire habile à voter à l'assemblée, ordonner la convocation et la tenue de l'assemblée conformément à ses directives. Elle peut subordonner l'ordonnance aux conditions qu'elle juge appropriées, notamment

Convocation par le tribunal

costs of holding the meeting or otherwise as the court considers appropriate.

Idem

(2) Without restricting the generality of subsection (1), the court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted under this section.

Effect of meeting

(3) A meeting called, held and conducted under this section is for all purposes a meeting of shareholders of the provincial corporation duly called, held and conducted.

Notice to Superintendent

(4) A person applying under subsection (1) shall give notice of the application to the Superintendent before the hearing and shall deliver a copy of the court's order, if any, to the Superintendent.

Application to court re: directors and auditors

85.—(1) A shareholder or director of a provincial corporation or the corporation may apply to the High Court of Justice to determine any controversy with respect to an election or appointment of a director or auditor of the corporation.

Notice to Superintendent

(2) A person applying under subsection (1) shall give notice of the application to the Superintendent before the hearing and shall deliver a copy of the court's order, if any, to the Superintendent.

Notice of orders

(3) Upon an application under this section, the court may make any order it considers appropriate including, without limiting the generality of the foregoing,

- (a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;
- (b) an order declaring the result of the disputed election or appointment;
- (c) an order requiring a new election or appointment and including in the order directions for the management of the business and affairs of the corporation until a new election is held or appointment made; and
- (d) an order determining the voting rights of shareholders and of persons claiming to own shares.

Proxies
1982, c. 4

86. Part VIII of the *Business Corporations Act*, 1982 applies with necessary modifications with respect to every pro-

celles relatives à la caution pour les frais engagés aux fins de la tenue de l'assemblée.

(2) Le tribunal peut notamment, à l'occasion d'une assemblée convoquée et tenue en application du présent article, ordonner la modification ou la dispense du quorum exigé par le règlement intérieur ou la présente loi. Idem

(3) L'assemblée convoquée et tenue en application du présent article est, à toutes fins, régulière. Validité de l'assemblée

(4) L'auteur de la requête présentée en vertu du paragraphe (1) en notifie le surintendant avant l'audience, et lui remet une copie de l'ordonnance rendue, le cas échéant. Avis au surintendant

85 (1) La compagnie provinciale, ainsi que tout actionnaire ou administrateur, peut demander à la Haute Cour par voie de requête de trancher tout différend relatif à l'élection ou à la nomination d'un administrateur ou d'un vérificateur. Requête, administrateur et vérificateur

(2) L'auteur de la requête présentée en vertu du paragraphe (1) en notifie le surintendant avant l'audience, et lui remet une copie de l'ordonnance rendue, le cas échéant. Avis au surintendant

(3) Sur requête présentée en vertu du présent article, le tribunal peut, par ordonnance, prendre toute mesure qu'il estime appropriée et notamment : Idem

- a) interdire à l'administrateur ou au vérificateur dont l'élection ou la nomination est contestée d'agir jusqu'au règlement du différend;
- b) proclamer le résultat de l'élection ou de la nomination litigieuse;
- c) ordonner une nouvelle élection ou une nouvelle nomination, en donnant des directives sur la gestion des affaires de la compagnie en attendant l'élection ou la nomination;
- d) préciser les droits de vote des actionnaires et des personnes qui se prétendent propriétaires d'actions.

86 La partie VIII de la *Loi de 1982 sur les compagnies* s'applique avec les adaptations nécessaires à la compagnie Procurations 1982, chap. 4

vincial corporation as if it were a corporation incorporated under that Act.

PART VI

DIRECTORS AND OFFICERS

- 87.** The directors shall manage or supervise the management of the business and affairs of a provincial corporation.
- 88.**—(1) The concurrence of a majority of the directors present at a meeting of the directors is necessary to pass any resolution.
- (2) Unless the instrument of incorporation, this Act or the by-laws otherwise provide, the directors, by resolution, may make, amend or repeal any by-laws that regulate the business or affairs of a provincial corporation.
- (3) Where a by-law is made, amended or repealed under subsection (2), the directors shall submit the by-law, amendment or repeal to the shareholders at the next meeting of shareholders, and the shareholders shall confirm, reject or amend the by-law, amendment or repeal.
- (4) Where a by-law is made, amended or repealed under subsection (2), the by-law, amendment or repeal is effective from the date of the resolution of the directors until it is confirmed, confirmed as amended or rejected by the shareholders under subsection (3) or until it ceases to be effective under subsection (5) and, where the by-law is confirmed or confirmed as amended, it continues in effect in the form in which it was so confirmed.
- (5) If a by-law or an amendment or repeal of a by-law is rejected by the shareholders, or if the directors do not submit the by-law, amendment or repeal to the shareholders as required under subsection (3), the by-law, amendment or repeal ceases to be effective on the date of such rejection or on the date of the meeting of shareholders at which it should have been submitted, as the case may be, and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until it is confirmed or confirmed as amended by the shareholders.
- (6) If a shareholder proposal to make, amend or repeal a by-law is made in accordance with section 77 and is adopted by shareholders at a meeting, the by-law, amendment or

provinciale comme s'il s'agissait d'une compagnie constituée en vertu de cette loi.

PARTIE VI

ADMINISTRATEURS ET DIRIGEANTS

87 Les administrateurs gèrent les affaires de la compagnie provinciale, ou supervisent leur gestion.

Fonctions des administrateurs

88 (1) L'adoption d'une résolution nécessite l'accord d'une majorité des administrateurs présents lors d'une réunion des administrateurs.

Résolutions

(2) Sauf disposition contraire de l'acte constitutif, de la présente loi ou du règlement intérieur, les administrateurs peuvent, par résolution, établir, modifier ou abroger tout règlement intérieur portant sur les affaires de la compagnie provinciale.

Règlement intérieur

(3) Dans le cas d'adoption, de modification ou d'abrogation d'un règlement intérieur aux termes du paragraphe (2), les administrateurs soumettent cette mesure, lors de l'assemblée suivante, aux actionnaires, qui les confirment, les rejettent ou les modifient.

Confirmation par les actionnaires

(4) L'adoption, la modification ou l'abrogation d'un règlement intérieur aux termes du paragraphe (2) prennent effet à compter de la date de la résolution des administrateurs. Après la confirmation de la mesure ou sa modification par les actionnaires, celle-ci demeure en vigueur dans sa teneur initiale ou modifiée selon le cas. Toutefois, son adoption, sa modification ou son abrogation cessent d'avoir effet après leur rejet aux termes du paragraphe (3) ou au cas d'application du paragraphe (5).

Date d'entrée en vigueur

(5) L'adoption, la modification ou l'abrogation du règlement intérieur cessent d'avoir effet à la suite de leur rejet par les actionnaires ou de l'omission des administrateurs de soumettre ces mesures à leur approbation, conformément au paragraphe (3), à compter de la date du rejet ou de l'assemblée des actionnaires au cours de laquelle ces mesures auraient dû être soumises, selon le cas. Toute résolution ultérieure des administrateurs visant essentiellement le même but ne peut entrer en vigueur qu'après sa confirmation par les actionnaires, avec ou sans modifications.

Rejet, etc.

(6) Le règlement intérieur, la modification ou l'abrogation de ce règlement adoptés lors de l'assemblée sur la proposition

Règlement intérieur issu de la proposition d'un actionnaire

repeal is effective from the date of its adoption and requires no further confirmation.

By-law need
not be so
described

(7) A by-law need not be described as a by-law in a resolution referred to in this section.

Board of
directors

89.—(1) A provincial corporation shall have at least five directors.

Outside
directors

(2) At least one third of the directors of a provincial corporation shall be outside directors.

Idem

(3) For the purposes of this Part, an individual is not eligible to be an outside director if,

- (a) the individual holds more than 10 per cent of the voting shares of the corporation or of any of its affiliates;
- (b) the individual is an officer or employee of the corporation or any of its affiliates or has been an officer or employee of the corporation or any of its affiliates within two years of the date on which he or she would become or became a director;
- (c) the individual is a spouse or child of an individual described in clause (a) or (b); or
- (d) the individual is a relative of an individual described in clause (a) or (b) or a relative of a spouse of an individual described in clause (a) or (b) or if the individual is such a relative, he or she has the same home as an individual described in clause (a) or (b) or as a spouse of an individual described in clause (a) or (b).

Citizenship

(4) The majority of directors of a provincial corporation shall be resident Canadian citizens.

Change in
number of
directors

(5) A provincial corporation may by special resolution increase or decrease the number of its directors but no decrease in the number of directors shall shorten the term of an incumbent director or reduce the number of directors to fewer than five.

Director
disqualifi-
cation

90. The following persons are disqualified from being a director of a provincial corporation:

1. A person who is not an individual.

d'un actionnaire à cet effet présentée conformément à l'article 77 prennent effet à la date de leur adoption et ne nécessitent aucune autre confirmation.

(7) Il n'est pas nécessaire, dans une résolution aux termes du présent article, de désigner un règlement intérieur comme tel. Désignation de règlement intérieur non nécessaire

89 (1) La compagnie provinciale compte au moins cinq administrateurs. Conseil d'administration

(2) Au moins le tiers des administrateurs de la compagnie provinciale sont des administrateurs externes. Administrateurs externes

(3) Pour l'application de la présente partie, un particulier ne possède pas les qualités requises pour devenir administrateur externe si : Idem

- a) il est détenteur de plus de 10 pour cent des actions assorties du droit de vote de la compagnie ou d'un membre du même groupe;
- b) il est un dirigeant ou un employé de la compagnie ou d'un membre du même groupe, ou l'a été au cours des deux ans qui ont précédé la date à laquelle il deviendrait administrateur;
- c) il est le conjoint ou l'enfant du particulier visé à l'alinéa a) ou b);
- d) il est un parent du particulier visé à l'alinéa a) ou b) ou un parent du conjoint de ce dernier ou, si tel est le cas, il habite avec le particulier visé à l'alinéa a) ou b) ou avec le conjoint de ce dernier.

(4) Le conseil d'administration d'une compagnie se compose en majorité de citoyens résidents canadiens. Citoyenneté

(5) Une compagnie provinciale peut, par résolution spéciale, augmenter ou diminuer le nombre de ses administrateurs. Toutefois, une diminution de nombre ne peut entraîner l'abrogement du mandat d'un administrateur en fonction ni la réduction du nombre d'administrateurs à moins de cinq. Modification au nombre des administrateurs

90 Ne peuvent être administrateurs d'une compagnie provinciale : Inhabilité

1. Les personnes autres que les particuliers.

2. An individual who is less than eighteen years of age.
3. An individual who is of unsound mind and who has been so found by a court in Canada or elsewhere.
4. An individual who has the status of bankrupt.
5. An individual who is a director of a corporation not affiliated with the corporation of which the individual wishes to become a director.

Holding
shares

91. Unless the instrument of incorporation or the by-laws otherwise provide, a director of a provincial corporation is not required to hold shares issued by the corporation.

Directors
named in
instrument of
incorporation

92.—(1) Each director named in the instrument of incorporation of a provincial corporation shall hold office from the date of issue of the instrument until the first meeting of shareholders following the issue of the instrument.

Election

(2) The shareholders of a provincial corporation shall elect, at the first meeting of shareholders and at each succeeding annual meeting, directors to hold office for a term expiring not later than the close of the next annual meeting of shareholders following the election.

Term of a
director

(3) A director ceases to hold office at the close of the first annual meeting of shareholders following the director's election.

Idem

(4) Notwithstanding the provisions of this section, if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.

Failure to
elect

(5) If a meeting of shareholders fails to elect the number of directors required by the by-laws or by subsection 89 (1) by reason of the disqualification, incapacity or death of one or more candidates, the directors elected at that meeting, if they constitute a quorum, may exercise all the powers of the directors of the provincial corporation pending the holding of a meeting of shareholders in accordance with subsection 97 (2).

Notice to
Superin-
tendent

(6) Upon the election of a director, notice of such election shall be given to the Superintendent in the prescribed form.

Cumulative
voting

93. Where the by-laws provide for cumulative voting,

2. Les particuliers de moins de dix-huit ans.
3. Les faibles d'esprit qui ont été reconnus comme tels par un tribunal, même étranger.
4. Les personnes qui ont le statut de failli.
5. Le particulier qui est administrateur d'une compagnie qui n'est pas membre du même groupe que la compagnie auprès de laquelle celui-ci sollicite un mandat d'administrateur.

91 Sauf disposition contraire de l'acte constitutif ou du règlement intérieur, la qualité d'actionnaire n'est pas requise de l'administrateur d'une compagnie provinciale.

Détention
d'actions

92 (1) Le mandat des administrateurs désignés à l'acte constitutif d'une compagnie provinciale commence à la date de délivrance de l'acte constitutif et se termine à la première assemblée des actionnaires qui suit cette délivrance.

Administra-
teurs désignés
dans l'acte
constitutif

(2) Les actionnaires d'une compagnie provinciale élisent à leur première assemblée et à chaque assemblée annuelle subséquente les administrateurs, dont le mandat expire au plus tard à la clôture de la prochaine assemblée annuelle des actionnaires qui suit l'élection.

Élection

(3) Le mandat d'un administrateur prend fin à la clôture de la première assemblée annuelle qui suit son élection.

Mandat de
l'administra-
teur

(4) Malgré le présent article, le mandat des administrateurs, à défaut d'élection de nouveaux administrateurs lors d'une assemblée des actionnaires, se poursuit jusqu'à l'élection de leurs remplaçants.

Idem

(5) Si en raison de l'incapacité, de l'incapacité ou du décès d'un ou de plusieurs candidats, les actionnaires ne peuvent élire lors d'une assemblée le nombre d'administrateurs requis par le règlement intérieur ou le paragraphe 89 (1), les administrateurs élus à cette assemblée peuvent, si le quorum est atteint, exercer tous les pouvoirs des administrateurs jusqu'à la tenue d'une assemblée des actionnaires conformément au paragraphe 97 (2).

Défaut d'élire

(6) Dès l'élection d'un administrateur, avis en est donné au surintendant, selon la formule prescrite.

Avis au surin-
tendant

93 Lorsque le règlement intérieur prévoit le vote cumulatif :

Vote cumula-
tif

- (a) each shareholder entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by the shareholder multiplied by the number of directors to be elected, and may cast all such votes in favour of one candidate or distribute them among the candidates in any manner;
- (b) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more persons to be elected by a single resolution;
- (c) if a shareholder has voted for more than one candidate without specifying the distribution of votes among the candidates, the shareholder is deemed to have distributed the votes equally among the candidates;
- (d) if the number of candidates nominated for director exceed the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled;
- (e) a director may not be removed from office if the votes cast against removal would be sufficient to elect a director if they were voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the by-laws were being elected; and
- (f) the number of directors required by the by-laws may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director if they were voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the by-laws were being elected.

When
director
ceases to
hold
office

94.—(1) A director of a provincial corporation ceases to hold office upon,

- (a) death or resignation;
- (b) removal under section 95; or
- (c) becoming disqualified under section 90.

- a) les actionnaires qui ont le droit d'élire les administrateurs disposent d'un nombre de voix égal à celui qui se rattache à leurs actions, multiplié par le nombre d'administrateurs à élire. Ils peuvent exprimer leurs voix en faveur d'un seul ou de plusieurs candidats;
- b) chaque poste d'administrateur fait l'objet d'un vote distinct, sauf adoption à l'unanimité d'une résolution permettant à deux personnes ou plus d'être élues par la même résolution;
- c) l'actionnaire qui a voté pour plus d'un candidat, sans autres précisions, est réputé avoir réparti ses voix également entre les candidats;
- d) si le nombre des candidats est plus grand que celui des postes vacants, les candidats qui recueillent le plus petit nombre de voix sont éliminés jusqu'à ce que le nombre des candidats restants égale celui des postes vacants;
- e) un administrateur ne peut être révoqué lorsque les voix exprimées contre cette mesure suffiraient à assurer l'élection d'un administrateur si elles étaient cumulées lors d'une élection du nombre total des administrateurs prévu par le règlement intérieur, dans le cadre de laquelle le même nombre de voix était exprimé;
- f) le nombre d'administrateurs prévu par le règlement intérieur ne peut être réduit lorsque les voix exprimées contre la motion à cet effet suffiraient à assurer l'élection d'un administrateur, si elles étaient cumulées lors d'une élection du nombre total des administrateurs prévu par le règlement intérieur, dans le cadre de laquelle le même nombre de voix était exprimé.

94 (1) Le mandat d'un administrateur d'une compagnie provinciale prend fin dès :

Fin du mandat d'un administrateur

- a) son décès ou sa démission;
- b) sa révocation aux termes de l'article 95;
- c) son inhabilité à l'exercer aux termes de l'article 90.

- Resignation** (2) A resignation of a director becomes effective at the time a written resignation is received by the provincial corporation or at the time specified in the resignation, whichever is later.
- Notice to Superintendent** (3) Upon receipt of the resignation of a director, the provincial corporation shall deliver notice to the Superintendent of the resignation together with a copy of any statement made under subsection 96 (2) or (3).
- Removal of directors** **95.**—(1) Subject to clause 93 (e), the shareholders of a provincial corporation may by resolution at an annual or special meeting remove any director from office.
- Idem** (2) Where the holders of any class or series of shares of a corporation have an exclusive right to elect one or more directors, a director so elected may only be removed by resolution at a meeting of the shareholders of that class or series.
- Idem** (3) Subject to clauses 93 (a) to (d), a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed or, if not so filled, may be filled under section 97.
- Notice to director** **96.**—(1) A director of a provincial corporation is entitled to receive notice of and to attend and be heard at every meeting of shareholders.
- Reasons for resignation** (2) A director of a provincial corporation who,
- (a) resigns;
 - (b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him or her from office; or
 - (c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of the resignation or removal of the director or because the director's term of office has expired or is about to expire,
- may submit to the corporation a written statement giving the reasons for the resignation or the reasons, if any, why he or she opposes any proposed action or resolution, as the case may be.
- Idem** (3) Where a director of a provincial corporation resigns because he or she disagrees with an action or omission of the

(2) La démission d'un administrateur prend effet à la date de réception par la compagnie provinciale d'un écrit à cet effet ou à la date postérieure qui y est indiquée. Démission

(3) Dès réception de la démission d'un administrateur, la compagnie provinciale délivre au surintendant un avis à cet effet accompagné, le cas échéant, de la déclaration écrite visée aux paragraphes 96 (2) ou (3). Avis au surintendant

95 (1) Sous réserve de l'alinéa 93 e), les actionnaires de la compagnie provinciale peuvent, lors d'une assemblée annuelle ou extraordinaire, révoquer un administrateur par voie de résolution. Révocation des administrateurs

(2) Si les détenteurs d'une catégorie ou d'une série d'actions ont le droit exclusif d'élire un ou plusieurs administrateurs, l'administrateur ainsi élu ne peut être révoqué que par voie de résolution, adoptée lors d'une assemblée des actionnaires intéressés. Idem

(3) Sous réserve des alinéas 93 a) à d), toute vacance découlant d'une révocation peut être comblée lors de l'assemblée qui a prononcé la révocation ou, à défaut, aux termes de l'article 97. Idem

96 (1) Les administrateurs ont le droit de recevoir avis des assemblées d'actionnaires, d'y assister et d'y prendre la parole. Avis à l'administrateur

(2) L'administrateur qui : Motifs de démission

- a) démissionne;
- b) est informé, notamment au moyen d'un avis, de la convocation d'une assemblée en vue de le révoquer;
- c) est informé, notamment au moyen d'un avis, de la tenue d'une réunion du conseil d'administration ou d'une assemblée convoquées en vue de nommer ou d'élire son remplaçant, par suite de sa démission, de sa révocation ou de l'expiration effective ou imminente de son mandat,

peut, dans une déclaration écrite, exposer à la compagnie les motifs de sa démission ou, le cas échéant, de son opposition à la mesure ou à la résolution proposées.

(3) L'administrateur de la compagnie provinciale dont la démission est provoquée par une mesure ou une omission de Idem

board of directors or of the management of the corporation and,

(a) the director knows or believes that as a result of the action or omission the corporation or any shareholder, director, officer or employee of the corporation is or will be in contravention of this Act, the *Securities Act* or the *Criminal Code* (Canada) or legislation of another jurisdiction that is comparable to this Act or the *Securities Act*; or

R.S.O. 1980,
c. 466

R.S.C. 1970,
c. C-34

(b) the director knows or believes that as a result of the action or omission there has been or will be a change in the circumstances of the corporation that might materially and adversely affect the financial position of the corporation,

the director shall submit to the corporation a written statement giving the reasons for the resignation.

Distribution
of statement

(4) Upon receiving a statement under subsection (2), the corporation shall forthwith send a copy of the statement to every shareholder entitled to receive notice of meetings of shareholders unless the statement is included in or attached to a management information circular.

No liability

(5) No corporation or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (4).

Idem

(6) A person who in good faith makes a statement under subsection (3) shall not be liable in any civil action arising out of the statement.

Notice to
Superin-
tendent

(7) A director who resigns as director of a provincial corporation shall forthwith give notice to the Superintendent of the resignation and a copy of any written statement given under this section.

Vacancies

97.—(1) Subject to subsections (3) and (4), a quorum of directors may fill a vacancy among the directors, except a vacancy resulting from,

(a) an increase in the number of directors; or

(b) a failure to elect the number of directors required to be elected at any meeting of shareholders.

Election to
make
quorum

(2) If there is not a quorum of directors, or if there has been a failure to elect the number of directors required by the

la part du conseil d'administration ou de la direction présente à la compagnie une déclaration écrite exposant les motifs de sa démission :

- a) s'il sait ou croit que la mesure ou l'omission a entraîné ou entraînera de la part de la compagnie ou de son actionnaire, administrateur, dirigeant ou employé, une contravention à la présente loi, à la *Loi sur les valeurs mobilières*, aux lois semblables d'une autre compétence législative, ou au *Code criminel* (Canada);

L.R.O. 1980,
chap. 466
S.R.C. 1970,
chap. C-34

- b) s'il sait ou croit que la mesure ou l'omission a entraîné ou entraînera une modification de la situation de la compagnie pouvant porter gravement atteinte à sa situation financière.

(4) Dès réception de la déclaration aux termes du paragraphe (2), la compagnie en envoie une copie à chaque actionnaire ayant le droit de recevoir avis des assemblées, sauf si la déclaration figure ou est annexée à une circulaire d'information de la direction.

Distribution
de copies de
la déclaration

(5) La compagnie et la personne agissant en son nom n'engagent pas leur responsabilité pour le seul motif qu'ils diffusent conformément au paragraphe (4) la déclaration faite par un administrateur.

Absence de
responsabilité

(6) La personne qui, de bonne foi, fait la déclaration visée au paragraphe (3) n'engage pas sa responsabilité lors de toute poursuite civile qui s'ensuit.

Idem

(7) L'administrateur de la compagnie provinciale qui démissionne en donne sans délai avis au surintendant, accompagné d'une copie de toute déclaration écrite présentée aux termes du présent article.

Avis au surin-
tendant

97 (1) Sous réserve des paragraphes (3) et (4), les administrateurs peuvent, s'il y a quorum, pourvoir aux vacances survenues au sein du conseil, sauf celles qui résultent :

Postes vacants

- a) d'une augmentation du nombre d'administrateurs;
- b) du défaut d'élire le nombre d'administrateurs à élire lors d'une assemblée d'actionnaires.

(2) En l'absence de quorum ou à défaut d'élire le nombre d'administrateurs requis par le règlement intérieur ou par le paragraphe 89 (1), les administrateurs en fonction convoquent

Élection d'ad-
ministrateurs
pour former
le quorum

by-laws or by subsection 89 (1), the directors then in office shall forthwith call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder.

Election by
class of
shareholders

(3) Where the holders of any class or series of shares of a provincial corporation have an exclusive right to elect one or more directors and a vacancy occurs among those directors,

(a) subject to subsection (4), the remaining directors elected by that class or series may fill the vacancy except a vacancy resulting from an increase in the number of directors for that class or series or from a failure to elect the number of directors for that class or series; or

(b) if there are no such remaining directors, any holder of shares of that class or series may call a meeting of the holders thereof for the purpose of filling the vacancy.

No quorum

(4) The by-laws may provide that a vacancy among the directors shall only be filled by a vote of the shareholders, or by a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class or series.

Term

(5) A director appointed or elected to fill a vacancy holds office for the unexpired term of the director's predecessor.

Director's
fitness

98.—(1) The election or appointment of a person to the board of directors of a provincial corporation does not take effect until the corporation has satisfied the Superintendent that the person is fit, both as to character and competence, to be a director of a corporation and the Superintendent has approved the election or appointment of the person as a director.

Information

(2) The Superintendent may require a corporation to provide such information, material and evidence as the Superintendent may consider necessary to decide the fitness of a person to be a director.

Deemed
approval

(3) If the Superintendent does not notify a corporation, within thirty days of being asked to approve the appointment or election of a proposed director, that he or she is satisfied that the proposed director is fit to be a director or give notice of the time and place of a hearing on the matter, he or she

dans les meilleurs délais une assemblée extraordinaire des actionnaires afin de pourvoir aux vacances survenues au sein du conseil. S'ils négligent de le faire ou s'il n'y a aucun administrateur en fonction, tout actionnaire peut convoquer cette assemblée.

(3) Si les détenteurs d'une catégorie ou d'une série d'actions ont le droit exclusif d'élire un ou plusieurs administrateurs, les vacances survenues parmi ces administrateurs peuvent être comblées :

Élection par catégories d'actions

- a) sous réserve du paragraphe (4) et à l'exception des vacances résultant du défaut d'élire le nombre requis d'administrateurs ou d'une augmentation de ce nombre, par les administrateurs en fonction élus par cette catégorie ou cette série;
- b) en l'absence d'administrateurs en fonction, lors de l'assemblée que les détenteurs d'actions de cette catégorie ou série peuvent convoquer pour pourvoir aux vacances.

(4) Le règlement intérieur peut prévoir que les vacances au sein du conseil d'administration seront comblées uniquement à la suite d'un vote, soit des actionnaires, soit des détenteurs de la catégorie ou série ayant le droit exclusif d'élire les administrateurs dont il s'agit.

Absence de quorum

(5) L'administrateur nommé ou élu pour combler une vacance remplit la partie non expirée du mandat de son prédécesseur.

Durée

98 (1) L'élection ou la nomination d'une personne au conseil d'administration de la compagnie provinciale ne prend effet que lorsque le surintendant est convaincu par des preuves qui lui sont présentées par la compagnie que le candidat est apte, du point de vue de la moralité et de la compétence, à exercer les fonctions d'administrateur et que le surintendant y a donné son approbation.

Aptitudes de l'administrateur

(2) Le surintendant peut exiger que la compagnie lui fournisse les renseignements, les documents ainsi que la preuve qu'il estime nécessaires pour évaluer l'aptitude du candidat à exercer ces fonctions.

Renseignements

(3) Le surintendant est réputé convaincu de l'aptitude d'un candidat à exercer les fonctions d'administrateur si, dans les trente jours de la demande d'approbation de la nomination ou de l'élection du candidat, il n'a pas avisé la compagnie de son

Approbation réputée

shall be deemed to be satisfied as to the person's fitness to be a director.

Non-application

(4) Subsections (1) to (3) do not apply,

- (a) to a person who on the day this section comes into force is a director of a corporation so long as he or she remains a director of the corporation; or
- (b) to a person who has been approved under this section so long as he or she remains a director of the corporation.

Place of meetings

99.—(1) Where the by-laws of a provincial corporation so provide, a meeting of its board of directors may be held at any place within Canada and otherwise shall be held at its principal place of business.

Minimum number of meetings

(2) The board of directors shall meet at least five times in each year.

Quorum

(3) Subject to the by-laws and subsection (4), a majority of the number of directors required by the by-laws constitutes a quorum at any meeting of directors, but in no case shall a quorum be less than two-fifths of the number of directors, of which one must be an outside director.

Idem

(4) Subject to the instrument of incorporation or by-laws, where there is a vacancy or vacancies in the board of directors, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office.

Calling meeting of directors

(5) In addition to any other provision in the by-laws of a provincial corporation for calling meetings of directors, a quorum of the directors may, at any time, call a meeting of the directors for the transaction of any business the general nature of which is specified in the notice calling the meeting.

Notice

(6) Subject to the by-laws of the provincial corporation, notice of the time and place for the holding of the meeting called under subsection (5) shall be given to each director of the corporation by sending the notice ten days or more before the date of the meeting to the last address of the director as shown on the records of the corporation.

Waiver of notice

(7) A director may in any manner and at any time waive a notice of a meeting of directors and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except where a director attends a meeting for the express pur-

assentiment ou n'a pas fixé la date et l'endroit pour la tenue d'une audience pour connaître de la question.

(4) Les paragraphes (1) à (3) ne s'appliquent pas à la personne : Non-application des par. (1) à (3)

- a) qui est administrateur de la compagnie au moment de l'entrée en vigueur du présent article, tant qu'elle demeure en fonction;
- b) dont la nomination ou l'élection a fait l'objet d'une approbation aux termes du présent article, tant qu'elle demeure en fonction.

99 (1) Lorsque le règlement intérieur le prévoit, les réunions du conseil d'administration de la compagnie provinciale peuvent se tenir n'importe où au Canada. Dans les autres cas, elles se tiennent à l'endroit de son établissement principal. Lieu des réunions

(2) Les administrateurs tiennent au moins cinq réunions par année. Nombre minimal de réunions

(3) Sous réserve du règlement intérieur et du paragraphe (4), la majorité du nombre d'administrateurs exigé par les règlements constitue le quorum à toute réunion des administrateurs. Toutefois, le quorum ne doit en aucun cas être inférieur aux deux cinquièmes de ce nombre et doit inclure un administrateur externe. Quorum

(4) Sous réserve de l'acte constitutif ou du règlement intérieur, en cas de vacance au sein du conseil d'administration les administrateurs en fonction peuvent exercer tous les pouvoirs du conseil tant qu'il y a quorum. Idem

(5) En outre de toute disposition du règlement intérieur relative à la convocation des réunions des administrateurs, un groupe de ceux-ci formant quorum peut convoquer une réunion des administrateurs aux fins de délibérer sur toute question dont l'objet est indiqué en termes généraux dans l'avis de convocation. Convocation de la réunion des administrateurs

(6) Sous réserve du règlement intérieur, avis des date, heure et lieu de la réunion convoquée aux termes du paragraphe (5) est envoyé, au moins dix jours avant la date de la réunion, à chaque administrateur à la dernière adresse connue de ce dernier qui figure aux dossiers de la compagnie. Avis

(7) Les administrateurs peuvent, de quelque façon que ce soit et à n'importe quel moment, renoncer à l'avis de convocation. Leur présence à la réunion équivaut à une telle renonciation, sauf lorsqu'ils y assistent spécialement pour s'opposer aux délibérations pour le motif que la réunion n'est pas régulièrement convoquée. Renonciation à l'avis

pose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Adjourned
meeting

(8) Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting.

Meeting by
telephone,
etc.

(9) Unless the by-laws otherwise provide, if all the directors of a corporation present at or participating in the meeting consent, a meeting of directors or of a committee of directors may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and a director participating in such a meeting by such means is deemed for the purposes of this Act to be present at that meeting.

Place of
meeting by
telephone

(10) If a majority of the directors participating in a meeting held under subsection (9) is then in Canada, the meeting shall be deemed to have been held in Canada.

Executive
committee

100.—(1) The shareholders of a provincial corporation, by special resolution and subject to subsection (2), may authorize the directors to delegate any of their powers to an executive committee consisting of not fewer than three to be appointed by the directors from their number and at least one member of the executive committee shall be an outside director.

Limitations
on authority

(2) No executive committee has authority to,

- (a) submit to the shareholders any question or matter requiring the approval of the shareholders;
- (b) fill a vacancy among the directors or the members of the audit committee or the investment committee or in the office of auditor or appoint or remove the chief operating officer, however designated, the chief executive officer, however designated, the chief financial officer, however designated, the chairman of the board or the president of the corporation;
- (c) issue securities except in the manner and on the terms authorized by the directors;
- (d) declare dividends;
- (e) purchase, redeem or otherwise acquire shares issued by the corporation;

(8) Il n'est pas nécessaire de donner avis de l'ajournement d'une réunion si les date, heure et lieu de la reprise sont annoncés lors de la réunion initiale.

Ajournement
de la réunion

(9) Sauf disposition contraire du règlement intérieur et si tous les administrateurs présents ou qui participent à la réunion du conseil ou de son comité y consentent, ceux-ci peuvent y prendre part en utilisant des moyens techniques de communication, notamment le téléphone ou des moyens électroniques, permettant à tous les participants de communiquer entre eux de façon simultanée et instantanée. L'administrateur qui participe de cette façon à la réunion est réputé, pour l'application de la présente loi, y avoir assisté.

Réunion par
téléphone,
etc.

(10) Est réputée avoir lieu au Canada la réunion tenue aux termes du paragraphe (9) si la majorité des administrateurs participants se trouvent alors au Canada.

Lieu de la
réunion par
téléphone

100 (1) Les actionnaires d'une compagnie provinciale peuvent, par résolution spéciale et sous réserve du paragraphe (2), autoriser les administrateurs à former un comité directeur composé d'au moins trois d'entre eux, dont l'un au moins soit un administrateur externe, et à déléguer un ou plusieurs de leurs pouvoirs à ce comité.

Comité direc-
teur

(2) Le comité directeur ne peut :

Limitation
des pouvoirs

- a) soumettre aux actionnaires des questions qui nécessitent leur approbation;
- b) pourvoir au poste d'un administrateur, d'un membre du comité de vérification ou du comité de placements, ou du vérificateur, nommer ou destituer le responsable de l'exploitation, le responsable de la direction ou le responsable des finances, quelle que soit leur désignation, de même que le président du conseil d'administration ou le président de la compagnie;
- c) émettre des valeurs mobilières, sauf selon les modalités et aux conditions autorisées par les administrateurs;
- d) déclarer des dividendes;
- e) acquérir, notamment par achat ou rachat, des actions émises par la compagnie;

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- (f) pay a commission referred to in section 53;
- (g) approve a management information circular;
- (h) approve a take-over bid circular, directors' circular, or issuer bid circular or any amendment to any such circular referred to in Part XIX of the *Securities Act*;
- (i) approve any financial statements under subsection 119 (1);
- (j) adopt, amend or repeal by-laws;
- (k) approve any item requiring approval of the board of directors under Part IX; or
- (l) approve the written procedures described in section 152.

Further
limitation

(3) No business shall be transacted by an executive committee unless at least one outside director is present at the meeting.

Chairman

101.—(1) The directors of a provincial corporation shall elect from among themselves a person, other than the chief executive officer, however designated, of the corporation, to be the chairman of the board.

Other
officers

(2) The directors may designate the offices of the corporation and may appoint officers to those offices and specify their duties.

Qualifications

(3) Where the regulations prescribe qualifications for appointment as an officer, the directors shall not appoint a person who does not have those qualifications.

Audit and
investment
committees

102.—(1) The directors of a provincial corporation shall appoint from their number an audit committee and an investment committee which committees shall fulfil such duties as are required by this Act and as are prescribed by the regulations.

Idem

(2) Each committee appointed under subsection (1) shall consist of at least three members and a majority of the members shall be outside directors.

Acts not
invalid

103. An act done by the board of directors or by an officer is not invalid by reason only of any defect that is there-

- f) verser la commission visée à l'article 53;
- g) approuver une circulaire d'information de la direction;
- h) approuver une circulaire d'offre d'achat visant à la mainmise, une circulaire de la direction ou une circulaire d'offre d'achat de l'émetteur visées à la partie XIX de la *Loi sur les valeurs mobilières* ou une modification de celles-ci;
- i) approuver les états financiers visés au paragraphe 119 (1);
- j) adopter, modifier ou révoquer un règlement intérieur;
- k) approuver une mesure qui nécessite l'approbation du conseil d'administration aux termes de la partie IX;
- l) approuver la procédure écrite visée à l'article 152.

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chap. 466

(3) Le comité directeur ne peut délibérer sans qu'au moins un administrateur externe soit présent.

Autre restriction

101 (1) Les administrateurs de la compagnie provinciale choisissent parmi eux une personne, autre que le responsable de la direction de la compagnie quelle que soit sa désignation, à titre de président du conseil d'administration.

Président du conseil d'administration

(2) Les administrateurs peuvent déterminer les divers postes de la compagnie, y nommer des dirigeants et préciser leurs fonctions.

Dirigeants

(3) Les administrateurs ne peuvent pas nommer au poste de dirigeant la personne qui n'a pas les qualités prescrites par les règlements, le cas échéant.

Qualités prescrites

102 (1) Les administrateurs de la compagnie provinciale choisissent parmi eux les membres d'un comité de vérification et d'un comité de placements aux fins d'exercer les fonctions prévues pour ces comités par la présente loi et prescrites par les règlements.

Comités de placements et de vérification

(2) Les comités visés au paragraphe (1) se composent d'au moins trois membres dont la majorité sont des administrateurs externes.

Idem

103 Les actes accomplis par les membres du conseil d'administration ou les dirigeants ne sont pas invalides pour le seul motif de l'irrégularité de leur élection ou de leur nomination

Validité des actes

after discovered in the appointment, election or qualification of any of the directors or of the officer.

Resolutions **104.**—(1) A resolution, signed by all the directors entitled to vote on that resolution at a meeting of directors or a committee of directors, is as valid as if it had been passed at a meeting of directors or a committee of directors.

Idem (2) A copy of every resolution passed under subsection (1) shall be kept with the minutes of the proceedings of the directors or committee of directors.

Liability **105.**—(1) Directors of a provincial corporation who vote for or consent to a resolution authorizing the issue of a share for a consideration other than money are jointly and severally liable to the corporation to make good any amount by which the consideration received is less than the fair equivalent of the money that the corporation would have received if the share had been issued for money on the date of the resolution.

Idem (2) Directors of a provincial corporation who vote for or consent to a resolution authorizing,

- (a) any investment or transaction contrary to Part IX;
- (b) a purchase, redemption or other acquisition of shares contrary to section 47 or 48;
- (c) a reduction in the stated capital of the corporation contrary to section 50;
- (d) a commission contrary to section 53;
- (e) a payment of a dividend contrary to section 54;
- (f) a payment of an indemnity contrary to section 109;
- (g) a payment to a shareholder contrary to an order under section 209; or
- (h) any other payment to a shareholder, director or officer the effect of which is to reduce the capital base of the corporation to an amount that is less than that required under this Act,

are jointly and severally liable to restore to the corporation any amounts so distributed or paid and not otherwise recovered by it.

ou de leur défaut des qualités requises, constatée ultérieurement.

104 (1) La résolution signée de tous les administrateurs habiles à voter, en ce qui concerne cette résolution, lors d'une réunion du conseil ou de son comité a la même valeur que si elle avait été adoptée au cours d'une telle réunion. Résolutions

(2) Un exemplaire de chaque résolution visée au paragraphe (1) est conservé avec les procès-verbaux des réunions du conseil ou du comité. Idem

105 (1) Les administrateurs de la compagnie provinciale qui, par vote ou acquiescement, adoptent une résolution autorisant l'émission d'actions en contrepartie d'un apport autre qu'en monnaie sont solidairement tenus de donner à la compagnie la différence entre la juste valeur de cet apport et l'équivalent en monnaie qu'elle aurait reçu si l'action avait été émise à la date de la résolution en contrepartie d'un apport en monnaie. Responsabilité

(2) Les administrateurs qui ont, par vote ou acquiescement, approuvé l'adoption d'une résolution autorisant : Idem

- a) un placement ou une opération contrairement à la partie IX;
- b) l'acquisition, notamment par achat ou rachat, d'actions contrairement aux articles 47 ou 48;
- c) une réduction du capital déclaré contrairement à l'article 50;
- d) le versement d'une commission contrairement à l'article 53;
- e) le versement d'un dividende contrairement à l'article 54;
- f) le versement d'une indemnité contrairement à l'article 109;
- g) le versement de sommes d'argent à des actionnaires contrairement à une ordonnance aux termes de l'article 209;
- h) tout autre paiement à un actionnaire, à un administrateur ou à un dirigeant dont l'effet est de réduire l'apport en capital de la compagnie à un montant inférieur à celui exigé par la présente loi,

sont solidairement tenus de restituer à la compagnie les sommes ainsi versées et que celle-ci n'a pas recouvrées autrement.

Joint
liability

(3) A director who has satisfied a judgment rendered under this section is entitled to contribution from the other directors who voted for or consented to the unlawful act upon which the judgment was founded.

Application
to Court

(4) A director found liable under this section is entitled to apply to the High Court of Justice for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to Part IX, section 47, 48, 50, 53, 54 or 109 or an order made under section 209.

Idem

(5) Where an application is made under subsection (4), the court may, if it is satisfied that it is equitable to do so,

- (a) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to Part IX or section 47, 48, 50, 53, 54 or 109 or an order made under section 209;
- (b) order a corporation to return or issue shares to a person from whom the corporation has purchased, redeemed or otherwise acquired shares; or
- (c) make any further order it thinks fit.

Liability
for wages

106.—(1) The directors of a provincial corporation are jointly and severally liable to the employees of the corporation for all debts not exceeding six months' wages that become payable while they are directors for services performed for the provincial corporation and for the vacation pay accrued while they are directors for not more than twelve months under the *Employment Standards Act*, and the regulations thereunder or under any collective agreement made by the provincial corporation.

R.S.O. 1980,
c. 137

Limitation

(2) A director is liable under subsection (1) only if,

- (a) the director is sued while a director or within six months after ceasing to be a director; and
- (b) the action against the director is commenced within six months after the debt became payable, and
 - (i) the corporation is sued in the action against the director and execution against the corporation is returned unsatisfied in whole or in part, or

(3) L'administrateur qui a satisfait au jugement rendu en vertu du présent article peut répéter les sommes ainsi restituées contre chacun des administrateurs pour sa part lorsque ceux-ci ont, par vote ou acquiescement, approuvé l'adoption de la mesure illicite en cause.

Responsabilité
partagée

(4) L'administrateur tenu responsable aux termes du présent article peut demander à la Haute Cour, par voie de requête, une ordonnance obligeant les bénéficiaires, notamment les actionnaires, à lui remettre les fonds ou biens versés ou donnés contrairement à la partie IX, les articles 47, 48, 50, 53, 54 ou 109 ou à l'ordonnance rendue aux termes de l'article 209.

Requête

(5) Lors de la requête visée au paragraphe (4), le tribunal peut, s'il estime équitable de le faire :

Ordonnance
du tribunal

- a) ordonner aux bénéficiaires de remettre à l'administrateur les fonds ou les biens versés ou donnés contrairement à la partie IX, aux articles 47, 48, 50, 53, 54 ou 109 ou à l'ordonnance rendue aux termes de l'article 209;
- b) ordonner à la compagnie soit de rétrocéder les actions à la personne de qui elle les a acquises, notamment par achat ou rachat, soit d'en émettre en sa faveur;
- c) rendre les ordonnances additionnelles qu'il estime pertinentes.

106 (1) Les administrateurs sont solidairement responsables envers les employés, jusqu'à concurrence de six mois de salaire, pour des dettes qui résultent de l'exécution par ceux-ci de services pour le compte de la compagnie provinciale et qui deviennent exigibles durant leur mandat. Il en est de même pour les indemnités de vacance accumulées durant leur mandat, pour une période maximale de douze mois, aux termes de la *Loi sur les normes d'emploi* et de ses règlements ou d'une convention collective à laquelle la compagnie provinciale est partie.

Responsabilité
pour salaires

L.R.O. 1980,
chap. 137

(2) Un administrateur n'est responsable aux termes du paragraphe (1) que si :

Limitation

- a) d'une part, une action en recouvrement est intentée contre lui au cours de son mandat ou dans les six mois qui en suivent la cessation;
- b) d'autre part, l'action contre lui est intentée dans les six mois après que la dette est devenue exigible et :

- R.S.C. 1970,
c. W-10
- (ii) before or after the action is commenced the corporation is deemed insolvent and is ordered to be wound up under the *Winding-Up Act* (Canada) or is unable to pay its debts and is ordered to be wound up under the *Winding-Up Act* (Canada) and the claim for debts is proved.
- Idem
- (3) Where execution referred to in clause (2) (b) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.
- Rights of
director who
pays debt
- (4) Where a director pays a debt under subsection (1), the director is entitled to any preference that the employee would have been entitled to under the *Winding-Up Act* (Canada), and, where a judgment has been obtained, the director is entitled to an assignment of the judgment.
- Contribution
- (5) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.
- Deemed
director
- 107.**—(1) For the purpose of this section, a director or officer includes a person acting in a capacity similar to, or performing functions of, a director or officer.
- Standard of
care
- (2) Every director and officer of a provincial corporation in exercising his or her powers and in discharging his or her duties,
- (a) shall act honestly and in good faith with a view to the best interests of the corporation as a whole; and
- (b) shall exercise the care, diligence and skill of a reasonably prudent director or officer, as the case may be, under comparable circumstances.
- Idem
- (3) In considering whether a particular transaction or course of action is in the best interests of the provincial corporation as a whole, a director or officer shall have due regard to the interests of the depositors, as well as the shareholders of the corporation and, in the case of a trust corporation, shall also have due regard to the interests of the persons for whom it acts in a fiduciary capacity.
- Duty to
comply with
Act
- (4) Every director and officer of a provincial corporation shall comply with this Act and the regulations and the corporation's instrument of incorporation and by-laws.

(i) soit que cette action en recouvrement est intentée à la fois contre l'administrateur et la compagnie, et que la saisie-exécution pratiquée contre la compagnie ne peut satisfaire au montant accordé par le jugement,

(ii) soit que la compagnie est réputée insolvable ou est incapable de payer ses dettes et fait l'objet d'une ordonnance de mise en liquidation en vertu de la *Loi sur les liquidations* (Canada), avant ou après l'introduction de l'action, et que l'existence de la créance est établie.

S.R.C. 1970,
chap. W-10

(3) Lorsque la saisie-exécution visée à l'alinéa (2) b) a été pratiquée, les administrateurs ne sont tenus responsables que des sommes restant à recouvrer.

Idem

(4) L'administrateur qui acquitte les dettes visées au paragraphe (1) est subrogé aux droits de priorité de l'employé en vertu de la *Loi sur les liquidations* (Canada) et, si un jugement a été rendu, a le droit d'en exiger la cession.

Droit de l'administrateur
qui a acquitté
les dettes

(5) L'administrateur qui acquitte une dette aux termes du présent article peut répéter la somme versée, chacun pour sa part, contre les administrateurs qui étaient également responsables.

Répartition

107 (1) Pour l'application du présent article, les termes «administrateur» et «dirigeant» s'entendent en outre des personnes qui exercent des fonctions d'un administrateur ou d'un dirigeant, ou qui agissent à titre semblable.

Administrateur
réputé

(2) Les administrateurs et les dirigeants de la compagnie provinciale agissent, dans l'exercice de leurs attributions :

Norme applicable

- a) avec intégrité et de bonne foi, en vue de favoriser l'intérêt véritable de l'ensemble de la compagnie;
- b) avec le soin, la diligence et la compétence dont ferait preuve dans des circonstances semblables l'administrateur ou le dirigeant, selon le cas, raisonnablement prudent.

(3) Pour déterminer si une opération ou une mesure donnée est susceptible de servir l'intérêt véritable de l'ensemble de la compagnie provinciale, l'administrateur ou le dirigeant tient compte de l'intérêt des déposants comme de celui des actionnaires, ainsi que des personnes pour le compte desquelles la compagnie agit en qualité de fiduciaire, dans le cas d'une compagnie de fiducie.

Idem

Cannot
contract out
of liability

(5) No provision in a contract, the instrument of incorporation or the by-laws or a resolution relieves a director or officer of a provincial corporation from the duty to act in accordance with this Act and the regulations or relieves the director or officer from liability for a breach thereof.

Consent of
director at
meeting

108.—(1) A director who is present at a meeting of directors or committee of directors shall be deemed to have consented to any resolution passed or action taken thereat unless,

- (a) the director's dissent is entered in the minutes of the meeting;
- (b) the director requests that a dissent be entered in the minutes of the meeting;
- (c) the director sends a written dissent to the secretary of the meeting before the meeting is terminated; or
- (d) the director sends a dissent by registered mail or delivers it to the principal place of business of the corporation immediately after the meeting is terminated.

Idem

(2) A director who votes for or consents to a resolution is not entitled to dissent under subsection (1).

Idem

(3) A director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented thereto unless within seven days after becoming aware of the resolution or action the director sends a dissent by registered mail or delivers it to the principal place of business of the corporation and requests that the dissent be entered in the minutes of the next meeting.

Indemnifica-
tion

109.—(1) A provincial corporation may indemnify a person who is a director or officer of the corporation or a former director or officer of the corporation or a person who acts or acted at the corporation's request as a director or officer of a body corporate of which the corporation is or was a shareholder or creditor or for which the corporation acted in a fiduciary capacity, and the person's heirs and personal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by or on behalf of the person in respect of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or officer of such corporation or body corporate if,

(4) Les administrateurs et les dirigeants de la compagnie provinciale observent la présente loi et les règlements et se conforment à l'acte constitutif de la compagnie ainsi qu'au règlement intérieur.

Obligation
d'observer la
présente loi

(5) Nulle disposition d'un contrat, de l'acte constitutif, du règlement intérieur ou d'une résolution ne peut libérer les administrateurs ou les dirigeants de l'obligation d'agir conformément à la présente loi et aux règlements ni des responsabilités qui en découlent.

Exonération
interdite

108 (1) L'administrateur présent à une réunion du conseil ou d'un comité de celui-ci est réputé avoir acquiescé aux résolutions adoptées et aux mesures prises, sauf si sa dissidence, selon le cas :

Acquiesce-
ment lors
des réunions

- a) est consignée au procès-verbal;
- b) fait l'objet de sa demande à cet effet;
- c) fait l'objet d'un avis écrit qu'il envoie au secrétaire de la réunion avant la fin de celle-ci;
- d) est remise ou envoyée par courrier recommandé à l'établissement principal de la compagnie, immédiatement après la fin de la réunion.

(2) L'administrateur qui, par vote ou acquiescement, approuve l'adoption d'une résolution n'est pas fondé à faire valoir sa dissidence aux termes du paragraphe (1).

Idem

(3) L'administrateur absent d'une réunion au cours de laquelle une résolution a été adoptée ou une mesure prise est réputé y avoir acquiescé, sauf si, dans les sept jours suivant la date où il prend connaissance de cette résolution ou mesure, il envoie sa dissidence par courrier recommandé ou la remet à l'établissement principal de la compagnie et demande qu'elle soit consignée au procès-verbal de la prochaine réunion.

Idem

109 (1) La compagnie provinciale peut indemniser les personnes qui sont ou ont été ses administrateurs ou dirigeants ou les personnes qui, à sa demande, agissent ou ont agi en cette qualité auprès d'une personne morale dont la compagnie est actionnaire, créancière ou représentant fiduciaire, ainsi que leurs héritiers et ayants droit, de tous les frais et débours normaux, y compris les sommes versées pour la transaction d'une instance ou pour l'exécution d'un jugement, engagées par les personnes ou en leur nom lors d'une instance civile, pénale ou administrative à laquelle ils étaient parties en raison de leurs fonctions, à condition que ceux-ci :

Indemnisation
des adminis-
trateurs

- (a) the person acted honestly and in good faith with a view to the best interests of the corporation as a whole; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the person had reasonable grounds for believing that the conduct was lawful.

Idem

(2) A corporation may, with the approval of the High Court of Justice, indemnify a person referred to in subsection (1) in respect of an action by or on behalf of the corporation or body corporate to procure a judgment in its favour, to which the person is made a party by reason of being or having been a director or an officer of the corporation or body corporate, against all costs, charges and expenses reasonably incurred by or on behalf of the person in connection with such action if the person fulfils the conditions set out in clauses (1) (a) and (b).

Idem

(3) Notwithstanding anything in this section, a person referred to in subsection (1) is entitled to indemnity from the corporation in respect of all costs, charges and expenses reasonably incurred by the person in connection with the defence of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or officer of the corporation or body corporate, if the person seeking indemnity,

- (a) was substantially successful on the merits in the defence of the action or proceeding; and
- (b) fulfils the conditions set out in clauses (1) (a) and (b).

Liability
insurance

(4) A corporation may purchase and maintain insurance for the benefit of any person referred to in subsection (1) against any liability incurred by the person in the person's capacity as a director or officer of the corporation, except where the liability relates to a failure to act honestly and in good faith with a view to the best interests of the corporation as a whole.

Application
to Court

(5) A corporation or a person referred to in subsection (1) may on notice to the Superintendent apply to the High Court of Justice for an order approving an indemnity under this section and the court may so order and make any further order it thinks fit.

Idem

(6) Upon an application under subsection (5), the court may order that notice be given to any interested person and

- a) d'une part, aient agi avec intégrité et de bonne foi en vue de favoriser l'intérêt véritable de l'ensemble de la compagnie;
- b) d'autre part, dans le cas d'instances pénales ou administratives donnant lieu au versement d'une amende, aient eu de bonnes raisons de croire que leur conduite était conforme à la loi.

(2) La compagnie peut, avec l'approbation de la Haute Cour, indemniser les personnes visées au paragraphe (1) des frais et débours normaux engagés par les personnes ou en leur nom relativement à une instance intentée par la compagnie ou la personne morale ou pour le compte de celles-ci, en vue d'obtenir un jugement en leur faveur, et à laquelle elles étaient parties en raison de leurs fonctions, si les personnes remplissent les conditions énoncées aux alinéas (1) a) et b). Idem

(3) Malgré le présent article, les personnes visées au paragraphe (1) ont le droit d'être indemnisées par la compagnie des frais et débours normaux engagés relativement à la défense d'une instance civile, pénale ou administrative à laquelle elles étaient parties en raison de leurs fonctions, si : Idem

- a) elles ont obtenu gain de cause sur la plupart de leurs moyens de défense, sur le fond;
- b) elles remplissent les conditions énoncées aux alinéas (1) a) et b).

(4) La compagnie peut souscrire au profit d'une personne visée au paragraphe (1) une assurance couvrant la responsabilité qu'elle encourt pour avoir agi en qualité d'administrateur ou de dirigeant de la compagnie, à l'exception de la responsabilité découlant du défaut d'agir avec intégrité et de bonne foi en vue de favoriser l'intérêt véritable de l'ensemble de la compagnie. Assurance-responsabilité

(5) La compagnie ou l'une des personnes visées au paragraphe (1) peuvent, sur avis au surintendant, présenter devant la Haute Cour une requête en approbation d'une indemnité aux termes du présent article. Le tribunal peut rendre une ordonnance à cet effet ainsi que toute ordonnance additionnelle qu'il juge opportune. Requête

(6) Le tribunal peut ordonner que l'avis d'une requête présentée aux termes du paragraphe (5) soit donné à tout inté- Idem

such person is entitled to appear and be heard in person or by counsel.

Remuneration
of directors

110. The shareholders of a provincial corporation shall fix the remuneration of the directors.

Attendance
records

111.—(1) Each provincial corporation shall keep a record of the total number of meetings of the directors and of the audit and investment committees and the number of such meetings attended by each director.

Idem

(2) A summary of the record kept under subsection (1) shall be sent to each shareholder and to the Superintendent with the notice of the annual meeting and shall be available on request to any depositor of the corporation.

PART VII

AUDITORS AND FINANCIAL STATEMENTS

Auditors

112.—(1) The shareholders of a provincial corporation at their first annual or special meeting shall appoint an auditor to hold office until the close of the first or next annual meeting, as the case may be, and, if the shareholders fail to do so, the directors shall forthwith make such appointment.

Idem

(2) The shareholders of every provincial corporation shall at each annual meeting appoint an auditor to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

Casual
vacancy

(3) The directors may fill any casual vacancy in the office of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act.

Removal of
auditor

(4) Except where the auditor has been appointed under subsection (8), the shareholders of a provincial corporation, by resolution passed by a majority of the votes cast at a special meeting duly called for the purpose, may remove an auditor before the expiration of the auditor's term of office, and shall, by a majority of the votes cast at that meeting, appoint another auditor for the remainder of the removed auditor's term.

Notice

(5) Before calling a special meeting for the purpose specified in subsection (4) or an annual or special meeting where the board is not recommending the reappointment of the incumbent auditor, the corporation shall, fifteen days or more

ressé, qui peut comparaître et se faire entendre en personne ou par l'intermédiaire d'un avocat.

110 Les actionnaires de la compagnie provinciale fixent la rémunération des administrateurs.

Rémunération
des adminis-
trateurs

111 (1) La compagnie provinciale tient un dossier où sont consignées toutes les réunions du conseil d'administration ainsi que des comités de vérification et de placements et qui précise le nombre de ces réunions auxquelles chacun des administrateurs a assisté.

Dossier des
présences

(2) Un résumé du dossier tenu aux termes du paragraphe (1) est annexé à l'avis de convocation de l'assemblée annuelle et envoyé à chacun des actionnaires ainsi qu'au surintendant. Le résumé peut être consulté par les déposants de la compagnie à leur demande.

Idem

PARTIE VII

VÉRIFICATEURS ET ÉTATS FINANCIERS

112 (1) Les actionnaires de la compagnie provinciale nomment, à la première assemblée annuelle ou extraordinaire, un vérificateur dont le mandat expire à la clôture de la première assemblée annuelle ou de l'assemblée annuelle suivante, selon le cas. À défaut d'être nommé par les actionnaires, le vérificateur est nommé sans délai par les administrateurs.

Vérificateurs

(2) Les actionnaires nomment, à chaque assemblée annuelle, un vérificateur dont le mandat expire à la clôture de la prochaine assemblée annuelle. À défaut de nomination, le vérificateur en fonction poursuit son mandat jusqu'à la nomination de son successeur.

Idem

(3) Les administrateurs peuvent combler toute vacance fortuite du poste de vérificateur. Le vérificateur survivant ou alors en fonction, s'il y en a, peut agir dans l'intervalle.

Vacance for-
tuite

(4) Sauf si le vérificateur a été nommé en vertu du paragraphe (8), les actionnaires peuvent le révoquer avant l'expiration de son mandat par une résolution adoptée à la majorité des voix exprimées lors d'une assemblée extraordinaire dûment convoquée à cette fin. Lors de cette assemblée ils nomment à la majorité des voix son remplaçant pour la durée du mandat qui reste à courir.

Révocation
d'un vérifica-
teur

(5) Avant de convoquer soit une assemblée extraordinaire pour les fins visées au paragraphe (4), soit une assemblée annuelle ou extraordinaire si le conseil ne recommande pas de renouveler le mandat du vérificateur en fonction, la compa-

Avis au véri-
ficateur

before the mailing of the notice of the meeting, give to the auditor,

- (a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and
- (b) a copy of all material proposed to be sent to shareholders in connection with the meeting.

Right to
make
represent-
ations

(6) An auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing concerning,

- (a) his or her proposed removal as auditor;
- (b) the appointment or election of another person to fill the office of auditor; or
- (c) his or her resignation as auditor,

and the corporation, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting.

Remuneration

(7) The remuneration of an auditor appointed by the shareholders shall be fixed by the shareholders, or by the directors if they are authorized so to do by the shareholders, and the remuneration of an auditor appointed by the directors shall be fixed by the directors.

Appointment
by Court

(8) If a provincial corporation does not have an auditor, the High Court of Justice, upon the application of a director, a shareholder or the Superintendent, may appoint and fix the remuneration of an auditor to hold office until an auditor is appointed by the shareholders.

Notice of
appointment

(9) A provincial corporation, forthwith after the appointment of a person as auditor, shall give written notice of the appointment to the person and to the Superintendent.

Notice of
vacancy

(10) Where a provincial corporation has a vacancy in the office of auditor, it shall give notice of the vacancy forthwith to the Superintendent.

Right to
attend
shareholder
meetings

113.—(1) The auditor of a provincial corporation is entitled to receive notice of every meeting of shareholders and, at the expense of the corporation, may attend and be heard at any such meeting on matters relating to his or her duties as auditor.

gnie fait parvenir au vérificateur, au moins quinze jours avant l'envoi de l'avis de convocation :

- a) un avis écrit de son intention de convoquer l'assemblée en y indiquant la date proposée pour l'envoi de l'avis de convocation;
- b) un exemplaire de chacun des documents relatifs à l'assemblée devant être envoyés aux actionnaires.

(6) Le vérificateur a le droit de soumettre à la compagnie, au moins trois jours avant l'envoi de l'avis de convocation de l'assemblée, des observations par écrit concernant :

Droit de soumettre ses observations

- a) sa révocation proposée comme vérificateur;
- b) la nomination ou l'élection d'une autre personne pour combler son poste;
- c) sa démission en tant que vérificateur.

La compagnie, à ses propres frais, joint un exemplaire de ces observations à l'avis de convocation et le fait parvenir à chaque actionnaire qui a le droit de recevoir cet avis.

(7) La rémunération du vérificateur nommé par les actionnaires est fixée par ces derniers, ou par les administrateurs s'ils sont autorisés à cet effet par les actionnaires. La rémunération du vérificateur nommé par les administrateurs est fixée par ces derniers.

Rémunération

(8) Si la compagnie provinciale n'a pas de vérificateur, la Haute Cour, à la requête d'un administrateur, d'un actionnaire ou du surintendant, peut lui en nommer un et fixer sa rémunération. Ce vérificateur demeure en fonction jusqu'à la nomination de son successeur par les actionnaires.

Nomination par la Haute Cour

(9) Lorsqu'un vérificateur a été nommé, la compagnie provinciale en avise sans délai celui-ci et le surintendant par écrit.

Avis de la nomination

(10) La compagnie provinciale avise sans délai le surintendant de toute vacance survenue au poste de vérificateur.

Avis de poste vacant

113 (1) Le vérificateur de la compagnie provinciale a le droit de recevoir avis de toute assemblée d'actionnaires et peut y assister aux frais de la compagnie et y être entendu sur toute question relative à ses fonctions en tant que vérificateur.

Le vérificateur assiste à l'assemblée des actionnaires

Attend upon
request

(2) If any director or shareholder of a provincial corporation, whether or not the shareholder is entitled to vote at the meeting, gives written notice, at least five days before a meeting of shareholders, to the auditor or a former auditor of the corporation, the auditor or former auditor shall attend the meeting, at the expense of the corporation, and answer questions relating to his or her duties as auditor.

Idem

(3) An auditor is not required to comply with subsection (2) where it clearly appears that the request under subsection (2) is made primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the corporation or any of its directors, officers or security holders, or for a purpose that is not related in any significant way to the duties of the auditor.

Idem

(4) A director or shareholder who sends a notice referred to in subsection (2) shall send concurrently a copy of the notice to the corporation.

Replacement
auditor

(5) No person shall accept appointment or consent to be appointed as auditor of a provincial corporation if the person is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire until the person has requested and received from that auditor a written statement of the circumstances surrounding and the reasons, in the departing auditor's opinion, for the replacement.

Idem

(6) Notwithstanding subsection (5), a person otherwise qualified may accept appointment or consent to be appointed as auditor of a corporation if, within fifteen days after making the request referred to in that subsection, the person does not receive a reply.

Idem

(7) A person receiving a statement under subsection (5) shall promptly deliver a copy of the statement to the Superintendent and if no statement is received from the auditor being replaced within fifteen days after the request referred to in subsection (5), the person requesting the statement shall promptly give notice to the Superintendent of this fact.

Idem

(8) Any interested person may apply to the High Court of Justice for an order declaring the office of auditor of a provincial corporation to be vacant if the auditor has not complied with subsection (5), unless subsection (6) applies with respect to the appointment of the auditor.

No liability

114. An auditor or former auditor who in good faith makes an oral or written statement or report under this Act shall not be liable in any civil action arising therefrom.

(2) Lorsqu'un administrateur ou un actionnaire habile ou non à voter donnent au vérificateur ou à l'ancien vérificateur de la compagnie provinciale avis écrit, au moins cinq jours avant l'assemblée, celui-ci y assiste aux frais de la compagnie et répond à toute question relative à ses fonctions en tant que vérificateur.

Présence
nécessaire sur
demande

(3) Le vérificateur n'est pas tenu de se conformer au paragraphe (2) s'il apparaît nettement que sa convocation a pour objet principal, soit une demande personnelle ou le redressement d'un grief personnel contre la compagnie ou l'un de ses administrateurs, dirigeants ou détenteurs de valeurs mobilières, soit une question qui n'a aucun lien important avec les fonctions du vérificateur.

Idem

(4) L'administrateur ou l'actionnaire qui envoie l'avis visé au paragraphe (2) envoie simultanément copie à la compagnie.

Idem

(5) Nul ne peut accepter de remplacer le vérificateur de la compagnie provinciale qui a démissionné ou a été révoqué ou dont le mandat est expiré ou est sur le point d'expirer, avant d'avoir demandé et obtenu que celui-ci expose par écrit les circonstances de son remplacement, ainsi que les motifs qui, à son avis, l'expliquent.

Nouveau vérificateur

(6) Malgré le paragraphe (5), toute personne par ailleurs compétente peut accepter d'être nommée vérificateur si, dans les quinze jours suivant la demande visée à ce paragraphe, elle ne reçoit pas de réponse.

Idem

(7) La personne qui reçoit l'exposé écrit visé au paragraphe (5) envoie promptement une copie au surintendant. L'auteur d'une demande qui ne reçoit pas cet exposé dans les quinze jours en notifie promptement le surintendant.

Idem

(8) Toute personne intéressée peut, par voie de requête, demander à la Haute Cour de rendre une ordonnance aux fins de déclarer vacant le poste de vérificateur, si ce dernier ne s'est pas conformé au paragraphe (5), sauf le cas d'application du paragraphe (6).

Idem

114 Le vérificateur ou son prédécesseur qui de bonne foi fait une déclaration ou un rapport, oraux ou écrits, aux termes de la présente loi ne peut pas être tenu responsable dans toute instance civile qui en résulte.

Absence de
responsabilité

Disqualifica-
tion

115.—(1) A person is disqualified from being an auditor of a provincial corporation if the person is not an accountant and if the person is not independent of,

- (a) the corporation and its affiliates; and
- (b) the directors and officers of the corporation and its affiliates.

Idem

(2) For the purposes of this section,

- (a) independence is a question of fact; and
- (b) a person shall be deemed not to be independent if,
 - (i) the person or the person's business partner, spouse or child,
 - (A) is a business partner, director or officer of the corporation or any of its affiliates,
 - (B) beneficially owns directly or indirectly or exercises control or direction over 10 per cent or more of the voting shares of the corporation or any of its affiliates, or
 - (C) has been a receiver, a receiver and manager, a liquidator or a trustee in bankruptcy of the corporation or any of its affiliates within two years of the person's proposed appointment as auditor of the corporation, or
 - (ii) the person or the person's business partner is an employee of the corporation or any of its affiliates.

Saving

(3) No person shall be disqualified from acting as the auditor of a provincial corporation solely on the grounds that the person is a depositor in the corporation.

Resignation

(4) An auditor who becomes disqualified under this section shall resign forthwith upon becoming aware of the disqualification.

Application
to Court

(5) An interested person may apply to the High Court of Justice for an order declaring an auditor to be disqualified under this section and the office of auditor to be vacant.

115 (1) Pour être vérificateur, il faut être comptable et être indépendant : Qualités
requises

- a) de la compagnie et des membres du même groupe;
- b) des administrateurs et dirigeants de la compagnie et de ceux des membres du même groupe.

(2) Pour l'application du présent article :

Idem

- a) l'indépendance est une question de fait;
- b) est réputée ne pas être indépendante :

(i) la personne qui, ou dont l'associé, le conjoint ou l'enfant :

(A) est un associé, administrateur ou dirigeant de la compagnie ou d'un membre du même groupe,

(B) est le propriétaire bénéficiaire, directement ou indirectement, de 10 pour cent ou plus des actions de la compagnie assorties du droit de vote ou de celles des membres du même groupe, ou détient le contrôle de ce nombre de ces actions,

(C) a été le séquestre, l'administrateur-séquestre, le liquidateur ou le syndic de faillite de la compagnie ou d'un membre du même groupe dans les deux ans précédant la proposition de sa nomination au poste de vérificateur,

(ii) la personne qui est un employé de la compagnie ou d'un membre du même groupe ou celle dont l'associé l'est.

(3) Ne constitue pas une inhabilité à exercer les fonctions de vérificateur, le seul fait d'être déposant auprès de la compagnie provinciale. Exception

(4) Le vérificateur qui apprend qu'il est devenu inhabile aux termes du présent article démissionne sans délai. Démission

(5) Toute personne intéressée peut, par voie de requête, demander à la Haute Cour de rendre une ordonnance déclarant que le vérificateur est inhabile aux termes du présent article et que le poste est vacant. Requête à la
Haute Cour

Auditor
appointment
for subsidiary

116. A provincial corporation shall, where possible, cause its auditor or one of its auditors to be appointed auditor of any body corporate in which the corporation has invested its funds under section 167, and where such appointment is not possible, the provincial corporation shall inform the Superintendent of the circumstances that prevent the appointment.

Examination

117.—(1) An auditor of a provincial corporation shall make such examination of the financial statements required by this Act and the regulations to be placed before shareholders and of the annual return to be filed with the Superintendent under section 134 as is necessary to enable the auditor to report thereon and the auditor shall report as prescribed and in accordance with generally accepted auditing standards.

Reporting
error

(2) A director or an officer of a provincial corporation shall forthwith notify the audit committee and the auditor or the former auditor, if applicable, of any error or misstatement of which the director or officer becomes aware in a financial statement or annual return filed with the Superintendent that the auditor or the former auditor has reported upon if the error or misstatement in all the circumstances appears to be material.

Idem

(3) If an auditor or former auditor of a provincial corporation is notified or becomes aware of an error or misstatement in a financial statement or return filed with the Superintendent upon which the auditor or former auditor has reported and if, in the opinion of the auditor or former auditor, the error or misstatement is material, the auditor or former auditor shall inform each director.

Revised
financial
statements

(4) When under subsection (3) the auditor or former auditor informs the directors of an error or misstatement in a financial statement, the directors shall promptly prepare and issue revised financial statements or otherwise inform the shareholders.

Notice to
Superin-
tendent

(5) When under subsection (3) the auditor or former auditor informs the directors of an error or misstatement in a return filed with the Superintendent, the directors shall promptly notify the Superintendent.

Right of
access

(6) Upon the demand of an auditor of a provincial corporation, the present or former directors, officers, employees or agents of the corporation shall furnish such,

(a) information and explanations; and

116 La compagnie provinciale fait nommer, si possible, l'un de ses vérificateurs à ce titre auprès de la personne morale dans laquelle la compagnie a effectué des placements aux termes de l'article 167. Si cette nomination n'est pas possible, la compagnie provinciale fait part au surintendant des circonstances qui l'empêchent.

Vérificateur
nommé
auprès d'une
filiale

117 (1) Le vérificateur procède à l'examen des états financiers que la présente loi et les règlements exigent de soumettre aux actionnaires ainsi que du rapport annuel devant être déposé auprès du surintendant aux termes de l'article 134 qui est nécessaire afin de lui permettre de produire son rapport. Il fait ce rapport selon les modalités prescrites et conformément aux normes de vérification généralement reconnues.

Examen

(2) Tout administrateur ou dirigeant avise sans délai le comité de vérification de même que le vérificateur ou son prédécesseur, selon le cas, des erreurs ou des renseignements inexacts dont il prend connaissance dans les états financiers ou le rapport annuel déposé auprès du surintendant et qui ont fait l'objet d'un rapport de la part du vérificateur ou de l'un de ses prédécesseurs, si ces erreurs ou renseignements inexacts semblent importants compte tenu des circonstances.

Avis d'erreurs

(3) Le vérificateur ou celui de ses prédécesseurs qui prend connaissance d'erreurs ou de renseignements inexacts dans des états financiers ou le rapport déposé auprès du surintendant et qui ont fait l'objet d'un rapport de sa part, en informe chaque administrateur s'il est d'avis que ces erreurs ou renseignements inexacts sont importants.

Idem

(4) Lorsque le vérificateur ou son prédécesseur informent les administrateurs de l'existence d'erreurs ou de renseignements inexacts dans les états financiers aux termes du paragraphe (3), les administrateurs en informent promptement les actionnaires, notamment en dressant et en publiant des états financiers rectifiés.

États finan-
ciers rectifiés

(5) Les administrateurs notifient promptement le surintendant des erreurs ou des renseignements inexacts reproduits dans un rapport qui est déposé auprès de celui-ci et qui leur sont signalés par le vérificateur ou son prédécesseur aux termes du paragraphe (3).

Avis au surin-
tendant

(6) À la demande du vérificateur, les administrateurs, dirigeants, employés ou mandataires de la compagnie provinciale ou leurs prédécesseurs doivent :

Droit d'accès

- a) lui donner des renseignements et des éclaircissements;

- (b) access to records, documents, books, accounts and vouchers of the corporation and any of its subsidiaries,

as are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under this section and that the directors, officers, employees or agents are reasonably able to furnish.

Idem

(7) Upon the demand of the auditor of a provincial corporation, the directors of the corporation shall,

- (a) obtain from the present or former directors, officers, employees and agents of any subsidiary of the corporation the information and explanations that the present or former directors, officers, employees and agents are reasonably able to furnish and that are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under this section; and
- (b) furnish the information and explanations so obtained to the auditor.

No liability

(8) A person who in good faith makes an oral or written communication under this section shall not be liable in any civil action arising therefrom.

Reports to board

118.—(1) The auditor shall report to the board of directors of the provincial corporation whenever, in the auditor's opinion,

- (a) there has been any change in the circumstances of the corporation that might materially and adversely affect the financial position of the corporation;
- (b) there has been a contravention of this Act or the regulations;
- (c) there has been a contravention of the *Criminal Code* (Canada); or
- (d) there has been a contravention of any other law the contravention of which may affect the corporation's ability to carry on or transact business.

R.S.C. 1970,
c. C-34

Idem

(2) The auditor shall make a report under subsection (1) immediately upon becoming aware of a change or contravention described in that subsection.

- b) lui donner accès aux dossiers, documents, livres, comptes et pièces justificatives de la compagnie ou de ses filiales,

qui, à son avis, sont nécessaires aux fins de l'examen et du rapport visés par le présent article et que ces personnes sont raisonnablement en mesure de fournir.

(7) À la demande du vérificateur, les administrateurs de la compagnie provinciale doivent : Idem

- a) obtenir des administrateurs, dirigeants, employés ou mandataires de toute filiale de la compagnie ou de leurs prédécesseurs, tous les renseignements et éclaircissements que ces personnes sont raisonnablement en mesure de fournir et qui, de l'avis du vérificateur, sont nécessaires aux fins de l'examen et du rapport visés par le présent article;
- b) communiquer au vérificateur les renseignements et éclaircissements ainsi obtenus.

(8) La personne qui de bonne foi fait une divulgation orale ou écrite aux termes du présent article ne peut pas être tenue responsable dans toute instance civile qui en résulte. Absence de responsabilité

118 (1) Lorsque le vérificateur est d'avis que :

- a) la conjoncture dans laquelle se trouve la compagnie provinciale a subi une modification susceptible de porter gravement atteinte à sa situation financière;
- b) il y a eu contravention à la présente loi ou aux règlements;
- c) il y a eu contravention au *Code criminel* (Canada);
- d) il y a eu contravention à une autre loi qui peut avoir pour effet de porter atteinte à la compagnie dans l'exercice de ses activités,

Rapport au conseil d'administration

S.R.C. 1970, chap. C-34

il en fait rapport au conseil d'administration.

(2) Le vérificateur fait rapport aux termes du paragraphe (1) dès qu'il a connaissance de la modification ou de la contravention visées à ce paragraphe. Idem

Notice to
Superin-
tendent

(3) The auditor shall report to the Superintendent any matter dealt with in a report under subsection (1) which in the opinion of the auditor could affect the well-being of the provincial corporation and has not been corrected or appropriately responded to by the board of directors within thirty days of the day that the matter was reported to the board of directors.

Exception

(4) An auditor is not required to make a report under this section unless the auditor becomes aware of the change or contravention described in subsection (1) in the ordinary course of his or her duties as auditor.

Financial
statements,
etc., to be
given to
shareholders

119.—(1) The directors of a provincial corporation shall place before each annual meeting of shareholders,

(a) financial statements in consolidated form for the fiscal year ending on the last day of October, November or December and before the annual meeting, made up of,

(i) a statement of income for the year,

(ii) a statement of retained earnings, or surplus for the year,

(iii) a statement of change in financial position, and

(iv) a balance sheet as at the end of the year,

and, if the corporation has completed a financial year, showing in each case the corresponding figures for the last preceding financial period of the corporation;

(b) the report of the auditor to the shareholders on the statements referred to in clause (a);

(c) the financial statement of the corporation in consolidated form;

(d) the financial statement in consolidated form of every subsidiary of the corporation, and such statements may be presented in condensed form; and

(e) any further information respecting the financial position of the corporation and the results of its operations required by its instrument of incorpor-

(3) Le vérificateur fait rapport au surintendant de toute situation relevée dans le rapport prévu au paragraphe (1) qui, à son avis, est susceptible de porter atteinte à la bonne marche de la compagnie provinciale et que le conseil d'administration n'a pas corrigée ou à laquelle il n'a pas donné réponse dans les trente jours de la date à laquelle la situation lui a été signalée.

Rapport au
surintendant

(4) Le vérificateur n'est pas tenu de faire rapport aux termes du présent article, à moins que la modification ou la contravention visées au paragraphe (1) ne soient portées à sa connaissance lors de l'exercice normal de ses fonctions en tant que vérificateur.

Exception

119 (1) Les administrateurs de la compagnie provinciale présentent à chaque assemblée annuelle des actionnaires :

États finan-
ciers remis
aux action-
naires

- a) des états financiers consolidés pour l'année se terminant le dernier jour d'octobre, de novembre ou de décembre qui précède l'assemblée annuelle et qui comprennent :
 - (i) l'état des résultats de cette année,
 - (ii) l'état des bénéfices non répartis ou de l'excédent de cette année,
 - (iii) l'état de l'évolution de la situation financière,
 - (iv) le bilan à la fin de l'année.

Les chiffres correspondants de la période comptable précédente doivent y figurer aussi dans chaque cas si la compagnie a accompli un exercice complet;

- b) le rapport du vérificateur destiné aux actionnaires concernant les états financiers visés à l'alinéa a);
- c) les états financiers non consolidés de la compagnie;
- d) l'état financier consolidé de chacune de ses filiales, qui peut être présenté sous une forme simplifiée;
- e) tout renseignement supplémentaire concernant la situation financière de la compagnie ainsi que le

ation or its by-laws or by this Act or the regulations.

Copy of documents to shareholders

(2) A provincial corporation, not less than twenty-one days before each annual meeting of shareholders unless such period is waived by the shareholders, shall send a copy of the documents referred to in this section to each shareholder, except those who have informed the corporation in writing that they do not wish to receive copies of the documents.

Copy of documents to depositors

(3) A provincial corporation shall mail or deliver without charge a copy of the documents referred to in this section to every depositor of the corporation who in writing requests a copy.

Preparation of financial statements

120. The financial statements required under this Act shall be prepared in accordance with this Act and the regulations and, except as otherwise required under this Act and the regulations, in accordance with generally accepted accounting principles.

Audit committee

121.—(1) The audit committee of a provincial corporation shall meet at least twice each year to review,

- (a) any financial statements distributed to the shareholders;
- (b) the annual returns of the corporation filed with the Superintendent under section 134;
- (c) all reports of the auditor under section 118; and
- (d) any reports or transactions required by the regulations to be reviewed by the audit committee.

Idem

(2) In the case of statements and returns that under this Act must be approved by the board of directors of a provincial corporation, the audit committee shall report thereon to the board before the approval is given.

Auditor's attendance

(3) The auditor of a provincial corporation shall attend the meetings of the audit committee and the auditor is entitled to be heard at the meetings.

Calling meeting

(4) The auditor of a corporation, a member of the audit committee or a director may call a meeting of the audit committee at any time.

produit de ses opérations qu'exigent son acte constitutif, son règlement intérieur, la présente loi ou les règlements.

(2) Sauf si les actionnaires renoncent à ce délai, la compagnie provinciale envoie au moins vingt et un jours avant l'assemblée annuelle à ceux d'entre eux qui n'ont pas exprimé par écrit leur désir de ne pas les recevoir, une copie des documents visés au présent article.

Exemplaire
des documents
aux
actionnaires

(3) La compagnie provinciale poste ou délivre gratuitement, à chaque déposant qui en fait la demande par écrit, une copie des documents visés au présent article.

Exemplaire
des documents
aux
déposants

120 Les états financiers exigés aux termes de la présente loi sont dressés en conformité avec celle-ci et les règlements et, sauf disposition contraire de la présente loi ou des règlements, selon les normes comptables généralement reconnues.

Établissement
des états
financiers

121 (1) Les membres du comité de vérification se réunissent au moins deux fois l'an afin d'examiner :

Comité de
vérification

- a) les états financiers remis aux actionnaires;
- b) les rapports annuels de la compagnie déposés auprès du surintendant aux termes de l'article 134;
- c) tous les rapports du vérificateur visés à l'article 118;
- d) les rapports et opérations dont les règlements exigent un examen par le comité de vérification.

(2) Le comité de vérification fait préalablement rapport au conseil d'administration des états et des rapports qui doivent être approuvés par celui-ci aux termes de la présente loi.

Idem

(3) Le vérificateur de la compagnie provinciale assiste aux réunions du comité de vérification. Il a le droit d'y être entendu.

Présence du
vérificateur

(4) Le comité de vérification peut être convoqué par l'un de ses membres, par le vérificateur ou par un administrateur.

Convocation
aux réunions

Attendance
at
meetings of
board of
directors

(5) The auditor of a provincial corporation is entitled to attend and be heard at meetings of the board of directors on matters relating to his or her duties as auditor.

Approval by
directors

122.—(1) The financial statements of a provincial corporation shall be approved by the board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign and the auditor's report shall be attached to or accompany the financial statements.

Idem

(2) One of the directors signing a balance sheet as required by subsection (1) must be a member of the audit committee.

Publishing,
etc., of
financial
statements

(3) A provincial corporation shall not circulate copies of the financial statements of the provincial corporation referred to in section 119 unless the financial statements are,

(a) approved and signed in accordance with subsections (1) and (2); and

(b) accompanied by the report of the auditor of the corporation.

Interim
financial
statement

123.—(1) A provincial corporation that is an offering corporation shall send to each shareholder a copy of every interim financial statement required to be filed under the *Securities Act* and the regulations thereunder.

R.S.O. 1980,
c. 466

Idem

(2) The interim financial statement required by subsection (1) shall be sent to each shareholder, within sixty days of the date to which it is made up, at the shareholder's latest address as shown on the records of the corporation.

PART VIII

BOOKS, RECORDS AND RETURNS

Records

124.—(1) Where this Act requires a record to be kept by a corporation, it may be kept in a bound or looseleaf book or may be entered or recorded by any photographic system, any system of mechanical or electronic data processing or any other information storage system and it shall be kept for such period as may be prescribed.

Security of
records and
availability

(2) A corporation shall,

(a) take adequate precautions, appropriate to the means used, for guarding against the risk of falsifying the information recorded in its records; and

(5) Le vérificateur de la compagnie provinciale a le droit d'assister aux réunions du conseil d'administration et à y être entendu sur toute question relative à ses fonctions en tant que vérificateur.

Présence aux réunions du conseil d'administration

122 (1) Les états financiers doivent recevoir l'approbation du conseil d'administration, qui doit être attestée par la signature au bas du bilan de deux des administrateurs dûment autorisés à cet effet. Le rapport du vérificateur accompagne les états financiers ou y est annexé.

Approbation par les administrateurs

(2) L'un des administrateurs qui appose sa signature au bas du bilan conformément au paragraphe (1) doit être membre du comité de vérification.

Idem

(3) La compagnie provinciale ne peut diffuser les états financiers visés à l'article 119 que s'ils :

Diffusion des états financiers

- a) ont été approuvés et signés conformément aux paragraphes (1) et (2);
- b) sont accompagnés du rapport du vérificateur.

123 (1) La compagnie provinciale qui fait appel au public envoie à chaque actionnaire un exemplaire de chaque état financier périodique dont la *Loi sur les valeurs mobilières* et ses règlements exigent le dépôt.

État financier périodique

L.R.O. 1980, chap. 466

(2) L'état financier périodique visé au paragraphe (1) est envoyé, dans un délai de soixante jours après la date de son établissement, à chaque actionnaire à sa dernière adresse qui paraît aux dossiers de la compagnie.

Idem

PARTIE VIII

LIVRES, DOSSIERS ET RAPPORTS

124 (1) Les dossiers dont la présente loi requiert la tenue peuvent être conservés soit dans un livre relié ou à feuilles mobiles, soit à l'aide d'un procédé de mise en mémoire de l'information, notamment d'un procédé photographique ou d'un procédé mécanique ou électronique de traitement des données. Ils sont conservés pendant la période prescrite.

Dossiers

(2) La compagnie prend :

Prévention de la falsification des dossiers

- a) les mesures adéquates qui s'imposent en fonction du mode utilisé afin d'empêcher la falsification des inscriptions consignées à ses dossiers;

- (b) provide means for making the information recorded in its records available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the records.

Admissibility
of records in
evidence

(3) The bound or looseleaf book referred to in subsection (1) or, where the record is not kept in a book, the information in the form in which it is made available under clause (2) (b) is admissible in evidence as *prima facie* proof, before and after dissolution of the corporation, of all facts stated therein.

False
information

(4) No person shall remove, withhold or destroy information required by this Act or the regulations to be recorded, or knowing any information to be untrue, shall record or assist in recording it in a record.

Location of
records

125.—(1) Every registered corporation shall keep its instrument of incorporation and its by-laws at its principal place of business or at such place in Ontario other than the principal place of business as the directors designate and the corporation shall maintain at the principal place of business or at the designated place,

- (a) minutes of meetings and resolutions of shareholders;
- (b) a register of directors in which are set out the names and residence addresses, while directors, including the street and number, if any, of all persons who are or have been directors of the corporation with the several dates on which each became or ceased to be a director;
- (c) a securities register complying with section 126; and
- (d) a copy of the procedures referred to in section 152.

Idem

(2) An extra-provincial corporation that does not have its head office in Ontario shall be deemed to have complied with subsection (1) if it maintains at a place in Ontario designated by the directors a copy of its instrument of incorporation and its by-laws, and a copy of every minute, resolution, record and register referred to in clauses (1) (a), (b) and (c).

Idem

(3) In addition to the records described in subsection (1), a provincial corporation shall maintain in Ontario, and a registered extra-provincial corporation shall maintain in Canada,

- (a) adequate accounting records as required by this Act or the regulations;

- b) des mesures afin de communiquer dans un délai normal des renseignements consignés à ses dossiers sous une forme compréhensible et précise, à la personne autorisée par la loi à les consulter.

(3) Sont recevables comme preuve *prima facie* de leur contenu, avant et après la dissolution de la compagnie, les livres visés au paragraphe (1), ou, si les dossiers ne sont pas conservés dans un livre, les renseignements sous la forme sous laquelle ils sont communiqués aux termes de l'alinéa (2) b).

Recevabilité de la preuve d'après les dossiers

(4) Nul ne doit soustraire, retenir ou supprimer les renseignements dont la présente loi ou les règlements exigent l'inscription, ou, sachant que des renseignements sont faux, les inscrire ou aider à leur inscription dans un dossier.

Falsification des renseignements

125 (1) La compagnie inscrite conserve à son établissement principal ou dans un autre endroit en Ontario que désignent les administrateurs son acte constitutif et son règlement intérieur. Elle y conserve aussi :

Endroit où sont conservés les dossiers

- a) les procès-verbaux des assemblées et les résolutions des actionnaires;
- b) un registre des administrateurs où sont inscrits les noms et adresses personnelles, incluant la rue et le numéro, le cas échéant, de toutes les personnes qui sont ou qui ont été des administrateurs, de même que leurs diverses dates de désignation et de cessation des fonctions;
- c) un registre des valeurs mobilières conforme à l'article 126;
- d) un exemplaire de la procédure écrite visée à l'article 152.

(2) La compagnie extraprovinciale dont le siège social est situé en dehors de l'Ontario est réputée s'être conformée au paragraphe (1) si elle conserve, dans l'endroit de l'Ontario que désignent les administrateurs, une copie de son acte constitutif, de son règlement intérieur, ainsi que des procès-verbaux, résolutions, dossiers, et registres visés aux alinéas (1) a), b) et c).

Idem

(3) Outre les dossiers visés au paragraphe (1), la compagnie provinciale tient en Ontario et la compagnie extraprovinciale inscrite tient au Canada :

Idem

- (b) records containing minutes of meetings and resolutions of the directors and every committee thereof;
- (c) a record of all investments held by the corporation; and
- (d) copies of all returns to the Superintendent required by this Act or the regulations.

Idem

(4) In addition to the records described in subsections (1) and (3), a registered corporation shall maintain in Canada,

- (a) a record of all depositors, their names and addresses as far as is known and the sums deposited by such depositors;
- (b) where the corporation is a trust corporation, full and adequate records relating to the fiduciary activities of the corporation.

Securities
register

126.—(1) A provincial corporation shall maintain a securities register in which it records the securities issued by it in registered form, showing with respect to each class or series of securities,

- (a) the names, alphabetically arranged of persons who,
 - (i) are or have been within six years registered as shareholders of the corporation, the residency of such shareholders, the address including the street and number, if any, of every such person while a holder, and the number and class or series of shares registered in the name of such holder,
 - (ii) are or have been within six years registered as holders of subordinated notes of the corporation, the address including the street and number, if any, of every such person while a holder, and the principal amount of the subordinated notes registered in the name of such holder, or
 - (iii) are or have been within six years registered as holders of warrants of the corporation, the address including the street and number, if any, of every such person while a registered holder, and the class or series and number of warrants registered in the name of such holder; and

- a) des registres comptables adéquats tels qu'exigés par la présente loi ou les règlements;
- b) des dossiers où figurent les procès-verbaux des réunions du conseil d'administration et de ses comités, ainsi que leurs résolutions;
- c) un dossier de tous les placements détenus par la compagnie;
- d) une copie de tous les rapports dont la présente loi ou les règlements exigent le dépôt auprès du surintendant.

(4) Outre les dossiers visés aux paragraphes (1) et (3), la compagnie inscrite tient au Canada : Idem

- a) un dossier de tous les déposants, incluant leurs noms et adresses dans la mesure où ils sont connus, de même que les sommes qu'ils ont déposées;
- b) s'il s'agit d'une compagnie de fiducie, des dossiers adéquats et détaillés relativement aux activités fiduciaires de la compagnie.

126 (1) La compagnie provinciale tient un registre des valeurs mobilières où sont inscrites les valeurs mobilières nominatives qu'elle a émises, énonçant quant à chaque catégorie ou série :

Registre des
valeurs mobilières

- a) les noms, par ordre alphabétique, des personnes qui sont ou qui au cours des six dernières années ont été inscrites :
 - (i) à titre d'actionnaires, de même que leur résidence, l'adresse de chacune d'elles à cette époque, y compris la rue et le numéro, le cas échéant, ainsi que le nombre et la catégorie ou série d'actions inscrites à leur nom,
 - (ii) à titre de détenteurs de titres subalternes, de même que leur adresse à cette époque, y compris la rue et le numéro, le cas échéant, ainsi que le montant en capital des titres subalternes inscrits à leur nom,
 - (iii) à titre de détenteurs de bons de souscription de la compagnie, de même que leur adresse à cette époque, y compris la rue et le numéro, le cas échéant, ainsi que la catégorie ou la série et le nombre de bons inscrits à leur nom;

- (b) the date and particulars of the issue of each security.

Transfer
register

(2) A provincial corporation shall cause to be kept in Ontario a register of transfers in which all transfers of securities issued by the corporation in registered form and the date and other particulars of each transfer shall be set out.

Branch
transfer
registers

(3) A provincial corporation may maintain branch transfer registers at one or more places in Canada.

Transfer
agents

127. For each class of securities issued by it, a provincial corporation may appoint,

- (a) a trustee, transfer agent or other agent to keep the securities register and the register of transfers and one or more persons or agents to keep branch registers; and
- (b) a registrar, trustee or agent to maintain a record of issued security certificates and warrants,

and one person may be appointed for the purposes of both clauses (a) and (b) in respect of all securities of the corporation or any class or classes thereof.

Valid
registration

128.—(1) Registration of the transfer of a security of a provincial corporation in the register of transfers or a branch register of transfers is a complete and valid registration for all purposes.

Entry in
register of
transfers

(2) Particulars of every transfer of securities registered in every branch register of transfers shall be recorded in the register of transfers.

Documents
not
required to
be
produced

(3) A provincial corporation or a person appointed under section 127 is not required to produce,

- (a) any security certificate or warrant that is not in registered form; or
- (b) any security certificate or warrant that is in registered form after six years,
- (i) in the case of a share certificate, from the date of its cancellation,
- (ii) in the case of a warrant, from the date of its transfer or exercise, whichever occurs first, or

- b) la date de même que les détails de l'émission de toutes les valeurs mobilières.

(2) La compagnie provinciale tient un registre des transferts où sont inscrits tous les transferts de valeurs mobilières nominatives qu'elle a émises et où sont énoncés la date et les autres détails relatifs à chacun des transferts.

Registre des transferts

(3) La compagnie provinciale peut tenir des registres locaux de transferts à plus d'un endroit au Canada.

Registres locaux de transferts

127 La compagnie provinciale peut, à l'égard de chaque catégorie de valeurs mobilières qu'elle émet :

Agents des transferts

- a) confier la tenue du registre des valeurs mobilières et du registre des transferts à un fiduciaire, agent des transferts ou autre agent, et confier la tenue de registres locaux à une ou plusieurs personnes ou agents;
- b) confier la tenue d'un dossier des certificats de valeurs mobilières et des bons de souscription émis à un agent d'inscription, fiduciaire ou autre agent.

Une seule personne peut être nommée aux fins des alinéas a) et b) relativement à toutes catégories de valeurs mobilières ou relativement à une ou plusieurs catégories de celles-ci.

128 (1) L'inscription de valeurs mobilières au registre des transferts ou au registre local des transferts de la compagnie provinciale constitue une inscription complète et valide à toutes fins.

Inscription valide

(2) Les détails de chaque transfert de valeurs mobilières qui figurent aux registres locaux sont inscrits au registre des transferts.

Inscription au registre des transferts

(3) La compagnie provinciale ou la personne nommée en vertu de l'article 127 n'est pas tenue de produire :

Documents non exigés

- a) le certificat d'une valeur mobilière ou le bon de souscription non nominatifs;
- b) le certificat d'une valeur mobilière ou le bon de souscription nominatifs, six ans après :
 - (i) la date de son annulation, dans le cas d'un certificat d'action,
 - (ii) la date du transfert ou celle de l'exercice du

(iii) in the case of a subordinated note, from the date of cancellation of the note.

Open to
examination

129.—(1) The records mentioned in sections 125, 126 and 128 shall, during normal business hours of a corporation, be open to examination by any director.

Records of
account at
branch

(2) A registered corporation may keep at any place where it carries on business such parts of the accounting records as relate to the operations, business and assets and liabilities of the corporation carried on, supervised or accounted for at such place, but there shall be kept at the principal place of business of the corporation or such other place as is authorized under this Part such records as will enable the directors to ascertain the financial position of the corporation.

Copies

130. A shareholder of a provincial corporation is entitled upon request and without charge to one copy of the instrument of incorporation and the by-laws and the amendments thereto.

List of
shareholders

131.—(1) Upon payment of a reasonable fee and upon sending to a provincial corporation or its transfer agent the statutory declaration described in subsection (6), any person who is a shareholder or holder of a subordinated note of the corporation, the person's agents or personal representatives and, where the corporation is an offering corporation, any other person, may require the corporation or its transfer agent to furnish within ten days of receipt by the corporation of the statutory declaration a basic list setting out the names of the shareholders of the corporation, the number of shares of each class and series owned by each shareholder and the address of each shareholder, all as shown on the records of the corporation.

Idem

(2) The list referred to in subsection (1) when furnished shall be as current as is practicable having regard to the form in which the securities register of the corporation is maintained and shall be made up to a date not more than ten days before the date on which it is actually furnished.

Supplemental
lists

(3) A person requiring a corporation to supply a list under subsection (1) may, if the person states in the statutory declaration described in subsection (6) that the person requires supplemental lists, require the corporation or its agent upon payment of a reasonable fee to furnish supplemental lists setting out any changes from the basic list in the names or addresses of the shareholders and the number of shares owned by each shareholder for each business day following the date to which the basic list is made up.

droit qu'il représente, selon la première de ces dates, dans le cas d'un bon de souscription,

- (iii) la date de son annulation, dans le cas du titre subalterne.

129 (1) Les dossiers visés aux articles 125, 126 et 128 sont accessibles aux administrateurs pour consultation durant les heures de bureau de la compagnie.

Dossiers
accessibles
pour consulta-
tion

(2) La compagnie inscrite peut conserver à tout endroit où elle exerce ses activités, la partie des dossiers comptables qui a trait aux opérations et aux activités commerciales qui se déroulent ou qui sont supervisées à cet endroit, ou qui a trait à l'actif et au passif comptabilisés à cet endroit. Les dossiers qui permettent aux administrateurs de vérifier la situation financière de la compagnie sont cependant conservés à son établissement principal ou à l'autre endroit autorisé aux termes de la présente partie.

Dossiers
comptables
aux diverses
succursales

130 L'actionnaire qui en fait la demande a droit à un exemplaire gratuit de l'acte constitutif, du règlement intérieur, et de leurs modifications.

Exemplaire

131 (1) L'actionnaire ou le détenteur d'un titre subalterne de la compagnie, son mandataire ou ayant droit, ou, si la compagnie fait appel au public, toute personne, peut, moyennant le paiement de droits raisonnables et l'envoi à la compagnie provinciale ou à son agent des transferts de la déclaration solennelle visée au paragraphe (6), exiger que ceux-ci, dans les dix jours de la réception de la déclaration solennelle, remettent une liste principale qui énonce les noms, le nombre d'actions de chaque catégorie et série de même que l'adresse de chaque actionnaire tels qu'ils figurent aux dossiers de la compagnie.

Liste des
actionnaires

(2) La liste visée au paragraphe (1) est à jour dans la mesure du possible, eu égard au mode de tenue des registres des valeurs mobilières adopté par la compagnie. Cette mise à jour ne peut remonter à plus de dix jours de la remise de la liste.

Idem

(3) La personne qui affirme dans la déclaration solennelle visée au paragraphe (6) avoir besoin, outre la liste principale mentionnée au paragraphe (1), de listes supplétives, peut, moyennant le paiement d'un droit raisonnable, en exiger la remise par la compagnie ou son mandataire. Les listes supplétives énoncent, à l'égard de chaque jour ouvrable depuis la mise à jour de la liste principale, les modifications apportées aux noms et adresses des actionnaires et au nombre d'actions détenues par chacun d'eux.

Listes sup-
plétives

Idem

(4) The corporation or its agent shall furnish a supplemental list required under subsection (3),

- (a) on the date the basic list is furnished, where the information relates to changes that took place prior to that date; and
- (b) on the business day following the day to which the supplemental list relates, where the information relates to changes that take place on or after the date the basic list is furnished.

Idem

(5) A person requiring a corporation to supply a basic or supplemental list under this section may also require the corporation to include in the list the name and address of any known holder of an option or right to acquire shares of the corporation.

Statutory
declaration

(6) The statutory declaration referred to in subsection (1) shall state,

- (a) the name and address including street and number, if any, of the applicant and whether the applicant is a shareholder, holder of a subordinated note or any other person referred to in subsection (1);
- (b) if the applicant is a body corporate, its address for service; and
- (c) that the basic list and any supplemental lists may be used only as permitted under subsection (8).

Idem

(7) If the applicant is a body corporate, the statutory declaration described in subsection (6) shall be made by a director or officer of the body corporate.

Use of
information

(8) A list of shareholders obtained under this section shall not be used by any person except in connection with,

- (a) an effort to influence the voting by shareholders of the corporation;
- (b) an offer to acquire shares of the corporation; or
- (c) any other matter relating to the affairs of the corporation.

Trafficking
in lists

132. No person shall offer for sale or sell or purchase or otherwise traffic in a list or a copy of a list of all or any of the holders of securities of a provincial corporation.

(4) La compagnie ou son mandataire remet la liste supplé- Idem
tive exigée aux termes du paragraphe (3) :

- a) en même temps que la liste principale, si les modifications sont antérieures à la date de la remise;
- b) le jour ouvrable qui suit la date indiquée dans la liste supplétive, si les modifications se sont produites à la date de la remise de la liste principale ou à une date postérieure.

(5) La personne qui exige que la compagnie remette une Liste des
détenteurs
d'options
liste principale ou supplétive aux termes du présent article, peut également exiger que la compagnie fasse figurer sur cette liste les noms et adresses des détenteurs connus d'une option ou d'un droit d'acquérir des actions de la compagnie.

(6) La déclaration solennelle visée au paragraphe (1) Déclaration
solennelle
énonce :

- a) les nom et adresse, y compris la rue et le numéro, le cas échéant, de l'auteur de la demande de même que son titre d'actionnaire, de détenteur d'un titre subalterne ou autre titre visés au paragraphe (1);
- b) si l'auteur de la demande est une personne morale, le domicile élu;
- c) que la liste principale de même que les listes supplétives ne peuvent être utilisées qu'aux fins énoncées au paragraphe (8).

(7) Si l'auteur de la demande est une personne morale, l'un Idem
de ses administrateurs ou dirigeants fait la déclaration solennelle visée au paragraphe (6).

(8) La liste des actionnaires obtenue en vertu du présent Utilisation de
la liste
article ne peut être utilisée que dans le cadre :

- a) de tentatives en vue d'influencer le vote des actionnaires de la compagnie;
- b) de l'offre d'acquérir des actions de la compagnie;
- c) de toute autre question concernant les affaires de la compagnie.

132 Nul ne peut trafiquer, notamment en les offrant en Trafic des
listes
vente, en les vendant ou en les achetant, des listes ou copies

Returns

133. Every registered corporation at the times prescribed shall provide to the Superintendent such financial or other information as may be prescribed.

Annual
return

134.—(1) Every registered corporation shall prepare annually for the information of the Superintendent an annual return, on a consolidated basis and in the prescribed form, outlining the financial condition and affairs of the corporation for the fiscal year of the corporation, and the return shall be filed with the Superintendent within sixty days after the end of the period to which it relates.

Idem

(2) The return referred to in subsection (1) shall include, on an unconsolidated basis, the financial statement of the corporation and the statement of each of its subsidiaries.

Idem

(3) The return referred to in subsection (1) shall have attached to it a report of the auditor, which report shall be prepared in accordance with the regulations.

Idem

(4) The return referred to in subsection (1) shall be accompanied by a copy of a resolution of the directors showing that the return was adopted by them.

Filing of
financial
statements

135. Every registered corporation shall file with the Superintendent a copy of every statement of a financial nature related to the corporation furnished to its shareholders or the Ontario Securities Commission or any similar authority in another jurisdiction within five days after the distribution of the statement to the shareholders or its filing with the Commission or similar authority.

Filing of
corporate
changes

136. Every registered corporation shall file with the Superintendent,

- (a) copies of all applications and supporting documents of any nature made under such laws, as may be prescribed, of Canada or of any province or territory of Canada for any change in its instrument of incorporation or registration status and shall also file with the Superintendent a copy of any approval or refusal of such application within seven days of filing or receipt, as the case may be; and
- (b) copies of any changes made in its instrument of incorporation, registration or licence under the laws of Canada or of any province or territory of Canada.

de listes des détenteurs de valeurs mobilières de la compagnie provinciale.

133 La compagnie inscrite fournit au surintendant, dans le délai imparti, les renseignements prescrits d'ordre financier ou autre. Rapports

134 (1) La compagnie inscrite dresse chaque année à l'attention du surintendant un rapport, sous forme consolidée et selon la formule prescrite, qui énonce la situation et les affaires financières de la compagnie pour son exercice. Ce rapport est déposé auprès du surintendant dans les soixante jours qui suivent la fin de la période visée. Rapport annuel

(2) Le rapport visé au paragraphe (1) comprend, sous forme non consolidée, l'état financier de la compagnie et celui de chacune de ses filiales. Idem

(3) Le rapport visé au paragraphe (1) est accompagné du rapport du vérificateur, préparé conformément aux règlements. Idem

(4) Le rapport visé au paragraphe (1) est accompagné aussi d'une copie de la résolution qui confirme son adoption par les administrateurs. Idem

135 La compagnie inscrite dépose auprès du surintendant une copie de chaque état d'ordre financier concernant la compagnie et destiné aux actionnaires ou déposé auprès de la Commission des valeurs mobilières de l'Ontario ou de l'administration semblable d'une autre compétence législative, dans les cinq jours de sa distribution aux actionnaires ou de son dépôt auprès de la Commission ou de l'administration semblable. Dépôt des états financiers

136 La compagnie inscrite dépose auprès du surintendant : Dépôt des modifications aux statuts constitutifs

- a) une copie des demandes de modification à son acte constitutif ou à son statut d'inscription de même que des pièces justificatives de toute nature qui s'y rattachent, présentées en vertu des lois du Canada, d'une province ou d'un territoire du Canada qui sont prescrites. Elle dépose aussi, dans les sept jours du dépôt ou de la réception, selon le cas, une copie de l'approbation ou du rejet des demandes;
- b) une copie de chaque modification apportée soit à son acte constitutif, soit à son inscription ou à son permis, en vertu des lois du Canada, d'une province ou d'un territoire du Canada.

Provision of
information

137.—(1) Every registered corporation shall provide to the Trust Companies Association of Canada such financial and statistical information as may be prescribed.

Publication

(2) Where the Trust Companies Association of Canada receives information under subsection (1), it shall report to the public such financial and statistical information as may be prescribed at such periods as may be prescribed.

Public file

138.—(1) The Superintendent shall maintain a file on each registered corporation which shall contain such information as may be prescribed.

Idem

(2) Upon payment of the prescribed fee, any person, during usual office hours, may examine the registers referred to in section 30 and the file referred to in subsection (1) and may take extracts therefrom or obtain copies thereof.

PART IX

CONFLICT OF INTEREST

Power to
designate
person as
restricted
party

139. For the purposes of this Part, the Superintendent may designate,

- (a) any person to be a restricted party of a registered corporation if the Superintendent is of the opinion that,
 - (i) the person is acting in concert with a restricted party of the corporation to participate in or enter into an investment or other transaction with the corporation that would be prohibited or restricted if entered into with the corporation by the restricted party, or
 - (ii) there exists between the person and the corporation such an interest or relationship as might affect the exercise of the best judgment of the corporation with respect to an investment or other transaction; or
- (b) any shareholder of a registered corporation or of an affiliate of a registered corporation to be a restricted party of the corporation if the Superintendent is of the opinion that the shareholder is acting in concert with one or more other shareholders of the corporation or of an affiliate to control directly or indirectly 10 per cent or more of any class of shares of the registered corporation.

137 (1) La compagnie inscrite communique à l'Association des compagnies de fiducie du Canada les renseignements prescrits d'ordre financier et statistique.

Communi-
cation de
renseigne-
ments

(2) Si cette association reçoit des renseignements aux termes du paragraphe (1), elle rend publics, aux intervalles prescrits, les renseignements prescrits d'ordre financier et statistique.

Publicité

138 (1) Le surintendant tient, relativement à chaque compagnie inscrite, un dossier qui renferme les renseignements prescrits.

Dossiers
publics

(2) Une personne peut, moyennant le paiement des droits prescrits, consulter durant les heures de bureau les registres visés à l'article 30 et le dossier visé au paragraphe (1) et en tirer des extraits ou en obtenir des copies.

Idem

PARTIE IX

CONFLITS D'INTÉRÊTS

139 Pour l'application de la présente partie, le surintendant peut, à l'égard d'une compagnie inscrite, désigner en tant que personne assujettie à des restrictions :

Désignation
d'une per-
sonne assujet-
tie à des
restrictions

a) une personne, s'il est d'avis :

(i) que celle-ci, de concert avec une personne assujettie à des restrictions à l'égard de la compagnie, participe ou souscrit à des placements ou autres opérations avec la compagnie qui seraient interdits ou restreints s'ils étaient conclus avec la compagnie par cette deuxième personne,

(ii) qu'il existe entre la personne et la compagnie un intérêt ou des rapports susceptibles d'empêcher celle-ci d'évaluer de façon objective le bien-fondé d'un placement ou d'une autre opération;

b) l'actionnaire de la compagnie inscrite ou du membre du même groupe, si le surintendant est d'avis que cet actionnaire, de concert avec un ou plusieurs autres actionnaires de la compagnie ou d'un membre du même groupe, cherche à exercer directement ou indirectement le contrôle sur 10 pour cent ou plus d'une catégorie d'actions de la compagnie.

Prohibitions,
restricted
parties

140.—(1) Except as provided in this Part,

- (a) no registered corporation or subsidiary of a registered corporation shall directly or indirectly purchase from or lend to a restricted party of the corporation or enter any other transaction with a restricted party of the corporation; and
- (b) no restricted party of a registered corporation shall directly or indirectly purchase from or lend to the corporation or any subsidiary of the corporation or enter any other transaction with the corporation or any subsidiary of the corporation.

Idem,
directors

(2) Except as provided in clause 141 (1) (a), no registered corporation or subsidiary of a registered corporation shall knowingly invest by way of purchase of or loans on the security of real estate or personal property that at any time in the period of thirty-six months preceding the date of the advance of any funds by the corporation or its subsidiary was owned by a director or the spouse or child of the director or any relative of the director or spouse who has the same home as the director.

Exception

(3) Subsection (2) does not apply where the investment is a purchase of or a loan on the security of securities, as defined in section 1 of the *Securities Act*, for which there is a published market, as defined in section 88 of that Act.

R.S.O. 1980,
c. 466

Idem

(4) This Part does not apply so as to prevent the payment of directors' fees of the registered corporation or of a subsidiary of the registered corporation if the fees have been approved by the shareholders of the registered corporation.

Permitted
transactions,
board
approval

141.—(1) Subject to the prior approval of the board of directors of the registered corporation, a registered corporation or a subsidiary of a registered corporation may,

- (a) make a loan to any director, officer or employee of the corporation or to the spouse or any child of a director, officer or employee of the corporation on the security of the residence of the person to whom the loan is made if,
 - (i) the loan qualifies as an investment under clause 160 (1) (a),
 - (ii) the amount of the loan does not exceed 0.5 per cent of the capital base of the corporation, and

140 (1) Sauf disposition contraire de la présente partie : Interdictions

- a) nulle compagnie inscrite ou sa filiale ne doit, directement ou indirectement, effectuer d'achats auprès de la personne assujettie à des restrictions à son égard, lui consentir un prêt ou conclure avec elle une autre opération;
- b) nulle personne assujettie à des restrictions à l'égard de la compagnie inscrite ne doit, directement ou indirectement, effectuer d'achats auprès de la compagnie ou de sa filiale, lui consentir un prêt ou conclure avec elle une autre opération.

(2) Sous réserve de l'alinéa 141 (1) a), nulle compagnie inscrite ou sa filiale ne peut sciemment effectuer de placements au moyen d'achats des biens meubles ou immeubles qui, au cours de la période de trente-six mois qui a précédé toute avance faite par la compagnie ou sa filiale, étaient la propriété de l'administrateur, de son conjoint, de l'un de ses enfants, ou d'un parent de l'administrateur ou de son conjoint qui habitent avec l'administrateur, ni au moyen de prêts garantis par des sûretés sur de tels biens. Idem, administrateurs

(3) Le paragraphe (2) n'a pas d'application dans le cas de placements qui consistent en un achat de valeurs mobilières ou en un prêt garanti par des valeurs mobilières au sens de l'article 1 de la *Loi sur les valeurs mobilières* et pour lesquelles il existe un marché officiel au sens de l'article 88 de cette loi. Exception
L.R.O. 1980,
chap. 466

(4) La présente partie n'a pas pour effet d'empêcher l'attribution aux administrateurs de la compagnie inscrite ou de sa filiale des jetons de présence approuvés par les actionnaires de la compagnie inscrite. Idem

141 (1) Sous réserve de l'approbation préalable du conseil d'administration de la compagnie inscrite, celle-ci ou sa filiale peut : Opérations permises, approbation du conseil d'administration

- a) consentir un prêt, garanti par une sûreté sur l'immeuble qu'habite l'emprunteur, à l'administrateur, au dirigeant ou à l'employé de la compagnie, ou au conjoint ou à l'enfant de ces derniers, pourvu que les conditions suivantes soient remplies :

(i) le prêt est un placement admissible aux termes de l'alinéa 160 (1) a),

(ii) le montant du prêt ne dépasse pas 0,5 pour cent de l'apport en capital de la compagnie,

- (iii) in the case of a director who is not an employee or officer of the corporation or his or her spouse or child, the terms of the loan are no more favourable than those offered by the corporation in the ordinary course of business;
- (b) make a personal loan to any officer or employee of the corporation or to the spouse or any child of an officer or employee of the corporation if the loan qualifies as an investment under clause 160 (2) (b);
- (c) enter into written contracts with any restricted party for the provision of management services to or by the corporation or subsidiary so long as,
 - (i) the consideration is at or exceeds competitive and fair rates where the services are provided by the corporation or the subsidiary and is otherwise reasonable for the services provided, and
 - (ii) the consideration does not exceed competitive and fair rates where the services are provided to the corporation or the subsidiary and is otherwise not unreasonable for the services provided;
- (d) enter into a written lease of real estate or personal property with any restricted party for the use of the corporation or the subsidiary in carrying out its business, so long as,
 - (i) the rent does not exceed fair rental value,
 - (ii) the term of the lease and all renewals does not exceed five years, and
 - (iii) the terms of the lease are otherwise competitive and not unreasonable;
- (e) enter into written contracts with any restricted party for pension and benefit plans and other reasonable commitments incidental to the employment of officers and employees of the corporation or the subsidiary;
- (f) enter into employment contracts with officers or future officers of the corporation or the subsidiary;

- (iii) les conditions de prêt offertes par celle-ci à l'administrateur qui n'est ni son employé ou son dirigeant, ni le conjoint ou l'enfant de ces derniers, ne sont pas moins onéreuses que les conditions qu'elle pose dans le cours normal de ses affaires;
- b) consentir un prêt personnel au dirigeant ou à l'employé de la compagnie, ou au conjoint ou à l'enfant de ces derniers, pourvu que le prêt soit un placement admissible aux termes de l'alinéa 160 (2) b);
- c) conclure avec une personne assujettie à des restrictions un contrat par écrit ayant pour objet la prestation de services de gestion par la compagnie ou sa filiale ou pour leur compte, à condition que :
 - (i) d'une part, la contrepartie reçue en retour des services dispensés par la compagnie ou sa filiale soit égale ou supérieure aux tarifs normaux et concurrentiels et s'avère raisonnable compte tenu des services offerts,
 - (ii) d'autre part, la contrepartie versée en retour des services dispensés à la compagnie ou à sa filiale ne soit pas supérieure aux tarifs normaux et concurrentiels et ne s'avère pas excessive, compte tenu des services offerts;
- d) conclure par écrit avec une personne assujettie à des restrictions des baux mobiliers ou immobiliers portant sur des biens destinés à servir à la compagnie ou à sa filiale aux fins de leurs activités commerciales, pourvu que les conditions suivantes soient réunies :
 - (i) le montant du loyer ne dépasse pas la valeur locative normale,
 - (ii) la durée du bail et de ses reconductions ne dépasse pas cinq ans,
 - (iii) les conditions du bail sont concurrentielles et relativement raisonnables;
- e) conclure par écrit avec une personne assujettie à des restrictions des contrats écrits relatifs à des régimes de retraite et d'avantages sociaux et aux autres engagements normaux reliés à l'acquisition des services de ses dirigeants et employés ainsi que de ceux de sa filiale;

- (g) enter into written contracts with any restricted party for the purchase of goods or services, other than management services, used or required by the corporation or the subsidiary in carrying on its business, so long as the price paid for such goods or services is competitive and at market value or fair rates, supported by appropriate documentation of such value or rates; and
- (h) enter into such investments or other transactions as may be prescribed.

Loans to
employees,
board
approval not
required

(2) Notwithstanding clause (1) (a) or (b), a registered corporation may make a loan to an employee of the corporation who is not a director or officer of the corporation or to his or her spouse or child without obtaining the approval of the board of directors if the amount of the loan does not exceed \$100,000 and there is compliance with subclauses (1) (a) (i) and (ii) or clause (1) (b), as the case may be.

Other
permitted
transactions,
board
approval
not required

(3) A registered corporation or a subsidiary of a registered corporation, without the approval of the board of directors of the registered corporation, may enter into,

- (a) employment contracts with persons who are not directors or officers of the corporation or the subsidiary;
- (b) transactions with a restricted party which involve nominal or immaterial or expenditures by the corporation or the subsidiary;
- (c) transactions with a restricted party for the sale of goods or the provision of services normally provided to the public by the corporation or the subsidiary in the ordinary course of business so long as the prices and rates charged by the corporation or subsidiary are competitive and at fair rates; and
- (d) such investments or other transactions as may be prescribed.

Onus on
corporation

142. The onus of demonstrating that prices and rates are competitive or at fair rates, or that services are reasonable or normally provided to the public in the ordinary course of business or that expenditures are immaterial, as the case may be, is upon the registered corporation or its subsidiary and the restricted party.

- f) conclure avec ses dirigeants actuels ou futurs ou ceux de sa filiale des contrats d'acquisition de leurs services;
- g) conclure avec une personne assujettie à des restrictions des contrats écrits d'acquisition de biens ou de services nécessaires à la compagnie ou à sa filiale dans le cadre de l'exercice de ses activités commerciales, à l'exclusion de services de gestion. Le prix versé en contrepartie doit toutefois être concurrentiel et représenter le prix du marché ou la juste valeur, chiffres à l'appui;
- h) souscrire à des placements et autres opérations qui sont prescrits.

(2) Malgré les alinéas (1) a) ou b), la compagnie inscrite peut consentir un prêt à son employé qui n'est ni son administrateur, ni son dirigeant, ou au conjoint ou à l'enfant de cet employé, sans l'approbation du conseil d'administration, pourvu que le montant du prêt ne dépasse pas 100 000 \$ et que les sous-alinéas (1) a) (i) et (ii) ou l'alinéa (1) b), selon le cas, soient respectés.

Prêts aux employés sans l'approbation du conseil d'administration

(3) La compagnie inscrite ou sa filiale peuvent, sans l'approbation du conseil d'administration de la compagnie inscrite, être partie :

Autres opérations permises sans l'approbation du conseil d'administration

- a) à des contrats d'embauchage passés avec des personnes qui ne sont ni ses administrateurs, ni ses dirigeants ou ceux de sa filiale;
- b) avec une personne assujettie à des restrictions, à des opérations qui n'occasionnent à la compagnie ou à sa filiale que des frais minimes ou symboliques;
- c) avec une personne assujettie à des restrictions, à des opérations relatives à la vente de biens ou à la prestation de services normalement offerts au public par la compagnie ou sa filiale dans le cours normal de leurs affaires, pourvu que les prix et tarifs qu'elle exige en retour soient justes et concurrentiels;
- d) à des placements et autres opérations qui sont prescrits.

142 Le fardeau de démontrer que les prix et tarifs sont justes et concurrentiels, que les services sont raisonnables ou normalement offerts au public dans le cours normal des affaires ou les frais minimes, selon le cas, revient à la compagnie inscrite ou à sa filiale ainsi qu'à la personne assujettie à des restrictions.

Fardeau de la preuve

Trusts and
estates

143.—(1) A registered trust corporation shall not participate in, or enter into, any investment or other transaction with a restricted party using funds held by the corporation as a fiduciary, other than funds held as deposits.

Idem

(2) Except as provided in this section, a registered trust corporation shall not invest funds held by the registered corporation as a fiduciary in any class of shares of the corporation or its affiliates.

Idem

(3) A registered trust corporation may act as a fiduciary of one or more trusts or estates that owns shares of the corporation or its affiliates if the shares were acquired before the corporation assumed responsibility as a fiduciary.

Idem

(4) Where a registered trust corporation acts as a fiduciary of one or more trusts or estates holding any class of shares of the corporation or its affiliates, the shares shall not be sold or voted or an offer for the shares refused except with the approval of the board of directors and the reasons for such actions shall be entered in the minutes of the board of directors.

Idem

(5) Each year, the board of directors shall approve a report on the shares of the registered corporation or its affiliates held by the corporation as fiduciary and the reasons for the retention of the shares.

Idem

(6) Nothing in this section authorizes a registered trust corporation to perform any act as a fiduciary which is otherwise prohibited.

Idem

(7) Nothing in this section prevents a registered trust corporation from fulfilling a specific direction or permission of a court or of an instrument creating a fiduciary duty that the corporation should or may purchase or sell shares of the corporation or its affiliates or participate in, or enter into, any investment or other transaction with a restricted party but a general power to invest in the discretion of the fiduciary shall not be considered to be a specific direction or permission for the purposes of this subsection.

Exemption

144.—(1) Upon the application of a registered corporation filed with the Superintendent, the Lieutenant Governor in Council may consent to the registered corporation making or entering into any investment or other transaction set out in this Part, with a restricted party if, in the opinion of the Lieutenant Governor in Council, the consent is necessary to the well-being of the registered corporation and the consent may

143 (1) La compagnie de fiducie inscrite ne doit souscrire ou participer à aucun placement ou autre opération avec une personne assujettie à des restrictions en utilisant les fonds qu'elle détient à titre de fiduciaire, sauf ceux détenus à titre de dépôts. Fiducies et successions

(2) Sauf disposition contraire du présent article, la compagnie de fiducie inscrite ne peut investir dans une catégorie de ses actions ou de celle des membres de son groupe les fonds qu'elle détient à titre de fiduciaire. Idem

(3) La compagnie de fiducie inscrite peut représenter plusieurs fiducies ou successions qui sont titulaires d'actions de la compagnie ou de membres du même groupe, si l'acquisition de ces actions a eu lieu avant que la compagnie n'ait assumé son rôle de fiduciaire. Idem

(4) Si la compagnie de fiducie inscrite agit à titre de fiduciaire d'une ou de plusieurs fiducies ou successions qui détiennent des actions d'une catégorie de la compagnie ou des membres du même groupe, les actions ne peuvent pas être aliénées, sauf avec l'approbation du conseil d'administration. De même, il ne peut être refusé d'offre à leur sujet ni exercé le droit de vote qui s'y rattache, sauf avec cette approbation. Les motifs de ces mesures sont consignés aux procès-verbaux des réunions du conseil d'administration. Idem

(5) Chaque année, le conseil d'administration donne son approbation à un rapport relatif aux actions de la compagnie inscrite ou des membres du même groupe détenues en fiducie par la compagnie ainsi que les motifs de cette détention en fiducie. Idem

(6) Le présent article n'a pas pour effet de permettre à la compagnie de fiducie inscrite d'accomplir, à titre de représentant fiduciaire, un acte autrement prohibé. Idem

(7) Le présent article n'a pas pour effet d'empêcher une compagnie de fiducie inscrite de se conformer à une directive ou à une autorisation précise d'un tribunal ou d'un acte créant une obligation fiduciaire en vertu de laquelle celle-ci devrait ou peut acquérir ou aliéner ses actions ou celles des membres du même groupe, ou participer ou souscrire à un placement ou autre opération avec une personne assujettie à des restrictions. Toutefois, le mandat général de placement confié au représentant fiduciaire ne s'interprète pas comme étant une directive ou une autorisation précise pour l'application du présent paragraphe. Idem

144 (1) À la demande de la compagnie inscrite déposée auprès du surintendant, le lieutenant-gouverneur en conseil Dispense

be subject to such terms and conditions as are set out in the consent.

Idem

(2) Subsection (1) does not apply so as to permit the giving of consent for an investment or other transaction that is prohibited by section 143.

Disclosure of interest

145.—(1) A restricted party who is a party to an investment or other transaction with a registered corporation or a subsidiary of a registered corporation or to a proposed investment or other transaction with the corporation or the subsidiary for which the approval of the board of directors of the corporation is required, whether under this Act or otherwise, shall disclose in writing to the corporation the nature of the restricted party's interest.

Disclosure of cross-directorship

(2) A director or officer of a registered corporation, with respect to an investment or other transaction with the corporation or a subsidiary of the corporation or with respect to a proposed investment or other transaction with the corporation or the subsidiary, shall disclose the nature of the interest if,

- (a) he or she is a director or an officer of a body corporate that is a party to any investment or other transaction of the corporation or the subsidiary or a proposed investment or other transaction of the corporation or subsidiary; or
- (b) he or she holds 10 per cent or more of the shares of a body corporate described in clause (a).

Disclosure by director

(3) The disclosure required by subsection (1) or (2) shall be entered in the minutes of the board of directors and shall be made, in the case of a director,

- (a) at the meeting at which a proposed investment or other transaction is first considered;
- (b) if the director was not then interested in a proposed investment or other transaction, at the first meeting after becoming interested;
- (c) if the director becomes interested after an investment or other transaction is entered into, at the first meeting after becoming interested; or
- (d) if a person who is interested in an investment or other transaction later becomes a director, at the first meeting after becoming a director.

peut consentir à ce qu'elle effectue un placement ou une autre opération avec une personne assujettie à des restrictions visés à la présente partie, si de son avis ce consentement est nécessaire à la bonne marche de la compagnie inscrite. Le consentement peut être assorti de conditions qui y sont énoncées.

(2) Le paragraphe (1) n'a pas pour effet de permettre qu'il soit consenti à un placement ou à une autre opération qui sont prohibés par l'article 143. Idem

145 (1) Doit divulguer par écrit à la compagnie la nature de son intérêt, la personne assujettie à des restrictions partie à un placement ou à une autre opération avec la compagnie inscrite ou sa filiale, ou à un projet de placement ou d'autre opération avec ces dernières qui exigent l'approbation préalable du conseil d'administration, soit aux termes de la présente loi, soit autrement. Divulgation d'intérêt

(2) L'administrateur ou le dirigeant d'une compagnie inscrite divulgue la nature de son intérêt à l'égard d'un placement ou d'une autre opération avec la compagnie ou sa filiale ou d'un projet de placement ou d'autre opération avec ces dernières, dans les cas suivants : Administrateur de plusieurs compagnies

- a) lorsqu'il est administrateur ou dirigeant d'une personne morale partie au placement ou à l'autre opération ou au projet de placement ou d'autre opération;
- b) lorsqu'il détient 10 pour cent ou plus des actions de la personne morale visée à l'alinéa a).

(3) La divulgation exigée par les paragraphes (1) ou (2) est consignée au procès-verbal des réunions du conseil d'administration. Elle se fait, dans le cas d'un administrateur, lors de la première réunion : Divulgation par l'administrateur

- a) au cours de laquelle le projet de placement ou d'autre opération est étudiée;
- b) qui suit l'acquisition par l'administrateur d'un intérêt, inexistant jusqu'alors, dans le projet de placement ou d'autre opération;
- c) qui suit l'acquisition par celui-ci d'un intérêt dans un placement ou une autre opération déjà en cours;
- d) qui suit sa nomination au poste d'administrateur alors que celui-ci possède déjà un intérêt dans un placement ou une autre opération.

Disclosure
by others

(4) The disclosure required by subsection (1) or (2) shall be made, in the case of a restricted party who is not a director,

- (a) forthwith after becoming aware that the investment or other transaction or proposed investment or other transaction is to be considered or has been considered at a meeting of directors;
- (b) if the restricted party becomes interested after an investment or other transaction is entered into, forthwith after becoming interested; or
- (c) if a person who is interested in an investment or other transaction later becomes a restricted party, forthwith after becoming a restricted party.

Director not
to vote

(5) A director required by subsection (1) or (2) to make a disclosure shall not take part in the discussion or vote on any resolution to approve an investment or transaction in relation to which disclosure is required under subsection (1) or (2) and the director shall not be present at any meeting of the board while it is dealing with the matter.

Director
not to use
influence

(6) A director referred to in subsection (5) shall not attempt in any way to influence the voting on any resolution to approve an investment or other transaction.

Procedures

146.—(1) Every registered corporation shall establish and its board of directors shall approve written review and approval procedures to be followed by the corporation to ensure compliance with this Part, and the board of directors shall review the procedures so established at least once each year.

Idem

(2) The procedures referred to in subsection (1) shall be developed by the investment committee of the board of directors and shall be reviewed at least twice each year by the investment committee.

Voidable
contract

147. Where a restricted party, a registered corporation or any subsidiary of a registered corporation fails to comply with this Part, and where an investment or other transaction which is prohibited by this Part takes place, the corporation or the Superintendent may apply to the High Court of Justice for an order setting aside the investment or other transaction and directing that the restricted party account to the registered corporation for any profit or gain realized and upon such application the court may so order or make such other order as it thinks fit, including an order for compensation for the

(4) La personne assujettie à des restrictions qui n'est pas administrateur fait sans délai la divulgation exigée par les paragraphes (1) ou (2) :

Divulgation
par d'autres

- a) quand elle apprend que le placement ou l'autre opération ou le projet de placement ou d'autre opération a été ou sera examiné lors d'une réunion des administrateurs;
- b) quand elle acquiert un intérêt dans un placement ou une autre opération déjà en cours;
- c) quand elle devient une personne assujettie à des restrictions lorsqu'elle possède déjà un intérêt dans un placement ou une autre opération.

(5) L'administrateur tenu à la divulgation aux termes des paragraphes (1) ou (2) ne peut participer aux discussions ou au vote sur la résolution présentée pour faire approuver le placement ou l'opération qui en font l'objet. Il ne peut non plus assister à la réunion du conseil d'administration pendant qu'il est traité de la question.

L'administra-
teur ne vote
pas

(6) L'administrateur visé au paragraphe (5) ne peut d'aucune façon tenter d'influencer le vote sur la résolution présentée pour faire approuver un placement ou une autre opération.

L'administra-
teur ne peut
user d'in-
fluence

146 (1) Afin de se conformer à la présente partie, la compagnie inscrite établit et observe une procédure écrite d'examen et d'approbation, que son conseil d'administration approuve. Le conseil d'administration réexamine cette procédure au moins une fois l'an.

Procédure

(2) Le comité de placements du conseil d'administration élabore la procédure visée au paragraphe (1) et la réexamine au moins deux fois l'an.

Idem

147 La compagnie ou le surintendant peut, par voie de requête, demander à la Haute Cour de justice de rendre une ordonnance annulant le placement ou l'autre opération effectués, contrairement à la présente partie, par la personne assujettie à des restrictions, la compagnie inscrite ou sa filiale, et enjoignant à la personne assujettie à des restrictions de rendre compte à la compagnie inscrite de tout bénéfice qu'elle en a tiré. Le tribunal peut rendre cette ordonnance ou toute autre ordonnance qu'il juge pertinente, notamment une ordonnance portant sur le versement d'une indemnité pour la perte et les dommages subis par la compagnie, ainsi que le versement de

Contrat sus-
ceptible d'an-
nullation

loss or damage suffered by the corporation and punitive or exemplary damages from the restricted party.

Derivative
action

148.—(1) Where an investment or other transaction that is prohibited under this Part takes place, a registered corporation or the Superintendent may apply to the High Court of Justice for an order that each person who participated in or facilitated such investment or other transaction made in contravention of this Part pay to the corporation on a joint and several basis,

- (a) the damages suffered;
- (b) the face value of the investment; or
- (c) the amount expended by the corporation in the transaction.

Saving

(2) Subsection (1) does not apply to a person who is not a director, unless the person knew or ought reasonably to have known that the investment or other transaction was made in contravention of this Part.

Reporting by
auditor

149. An auditor shall promptly report to the board of directors and the Superintendent any breach of any provision of this Part of which he or she is aware or of which he or she is made aware under section 150 and, if the board of directors does not act to rectify the breach within a reasonable period of time, the auditor shall promptly report the failure to rectify to the Superintendent.

Reporting by
others

150.—(1) Any person undertaking professional services for a registered corporation who, in providing the professional services, becomes aware of a breach of the provisions of this Part shall promptly report the breach to the board of directors and the auditor of the corporation unless he or she has already reported the breach under section 149.

Professional
advice

(2) No person undertaking professional services for a registered corporation shall advise the registered corporation or perform services for the corporation in an investment or other transaction in or to which the person is a party or has a direct or indirect beneficial interest in the subject-matter of the investment or transaction.

Solicitor-
client
privilege

(3) Nothing in this section abrogates any privilege that may exist between a solicitor and his or her client.

dommages-intérêts punitifs ou exemplaires par la personne assujettie à des restrictions.

148 (1) La compagnie inscrite ou le surintendant peut, par voie de requête, demander à la Haute Cour de justice une ordonnance portant que chacune des personnes qui a souscrit au placement ou à l'autre opération effectués contrairement à la présente partie ou qui en a facilité la réalisation verse à la compagnie, à titre solidaire, l'une des sommes suivantes :

Action oblique

- a) le montant des dommages subis;
- b) la valeur nominale du placement;
- c) la somme versée par la compagnie en vue de l'opération.

(2) Le paragraphe (1) ne s'applique pas à la personne qui n'est pas administrateur, sauf si celle-ci savait ou aurait normalement dû savoir que le placement ou l'autre opération étaient effectués contrairement à la présente partie.

Exception

149 Le vérificateur signale promptement au conseil d'administration et au surintendant toute contravention à une disposition de la présente partie dont il a connaissance ou qui est portée à sa connaissance aux termes de l'article 150. Advenant le défaut du conseil d'administration de corriger la situation dans un délai raisonnable, le vérificateur fait promptement part au surintendant de ce défaut.

Rapport par le vérificateur

150 (1) La personne qui, dans le cadre des services professionnels qu'elle fournit à la compagnie inscrite, prend connaissance d'une contravention à la présente partie, la signale promptement au conseil d'administration ainsi qu'au vérificateur de la compagnie, à moins qu'elle ne l'ait déjà signalée aux termes de l'article 149.

Rapport par d'autres

(2) La personne qui fournit des services professionnels à la compagnie inscrite s'abstient de dispenser à cette dernière des conseils ou services ayant trait à un placement ou à une autre opération auquel elle est elle-même partie ou sur l'objet duquel elle a un droit à titre de bénéficiaire, soit directement, soit indirectement.

Conseils d'ordre professionnel

(3) Le présent article ne porte pas atteinte au secret professionnel qui lie l'avocat à son client.

Secret professionnel de l'avocat

No liability

151. A person who in good faith makes a report under subsection 150 (1) shall not be liable in any civil action arising therefrom.

PART X

BUSINESS AND INVESTMENTS

Prudent
investment
standards

152.—(1) Every registered corporation shall adhere to prudent investment standards in making investment decisions and in managing its total investments.

Idem

(2) For the purposes of this Act, prudent investment standards are those which a reasonably prudent person would apply to investments made on behalf of another person with whom there exists a fiduciary relationship to make such investments, without undue risk of loss or impairment and with a reasonable expectation of fair return or appreciation.

Procedures

(3) Every registered corporation shall establish written procedures to ensure that prudent investment standards are applied by the corporation in making investment decisions and in managing the total investments of the corporation.

Development
of
procedures

(4) The procedures referred to in subsection (3) shall be developed by the investment committee of the board of directors of the corporation and shall be reviewed at least twice each year by the investment committee.

Idem

(5) The investment committee shall report on its review under subsection (4) and shall give its recommendations, if any, with respect to the procedures referred to in subsection (3) to the board of directors.

Approval by
board

(6) The procedures referred to in subsection (3) shall be subject to the approval of the board of directors and the board, upon receipt of any recommendation from the investment committee, shall review such procedures and make such changes as may be necessary.

Deposits,
loan
corporations

153.—(1) A registered provincial loan corporation and any other registered loan corporation that has capacity to do so may, in a debtor and creditor relationship for the purposes of investment, receive money,

(a) repayable on demand or after notice; or

(b) repayable upon the expiry of a fixed term,

151 La personne qui de bonne foi signale une contravention aux termes du paragraphe 150 (1) ne peut pas être tenue responsable dans toute instance civile qui en résulte.

Absence de responsabilité

PARTIE X

ACTIVITÉS COMMERCIALES ET PLACEMENTS

152 (1) Dans ses décisions quant aux placements et dans la gestion de l'ensemble de ses placements, la compagnie inscrite observe des normes de placements sûrs.

Normes de placements sûrs

(2) Pour l'application de la présente loi, les normes de placements sûrs sont celles qu'observerait la personne normalement prudente en faisant des placements pour le compte d'un mandant avec lequel elle entretiendrait un rapport fiduciaire à des fins de placements, qui ne comporteraient pas de risques indus de perte ou de dévaluation et qui donneraient la perspective raisonnable d'un rendement acceptable ou d'une hausse de valeur.

Idem

(3) La compagnie inscrite établit une procédure écrite qui assure la mise en application de normes de placements sûrs dans ses décisions quant aux placements et dans la gestion de l'ensemble de ses placements.

Procédure

(4) Le comité de placements du conseil d'administration de la compagnie élabore la procédure visée au paragraphe (3) et la réexamine au moins deux fois l'an.

Élaboration de la procédure

(5) Le comité de placements présente au conseil d'administration un rapport concernant le réexamen visé au paragraphe (4) et lui fait ses recommandations, le cas échéant, relativement à la procédure visée au paragraphe (3).

Idem

(6) La procédure visée au paragraphe (3) est subordonnée à l'approbation du conseil d'administration. Ce dernier, sur une recommandation du comité de placements, réexamine la procédure et y apporte les modifications qui s'imposent.

Approbation du conseil d'administration

153 (1) La compagnie de prêt provinciale inscrite et toute autre compagnie de prêt inscrite qui a capacité à cette fin peuvent, dans le cadre d'un rapport de créancier à débiteur, exister à des fins de placement, recevoir des sommes d'argent :

Dépôts, compagnies de prêt

a) remboursables sur demande ou sur préavis;

b) remboursables à échéance.

and the corporation may issue debentures or other evidences of indebtedness in respect thereof, appropriate to the debtor and creditor relationship created thereby.

Deposits,
trust
corporations

(2) A registered provincial trust corporation and any other registered trust corporation that has capacity to do so may, for the purpose of investment, receive money,

(a) repayable upon demand or after notice; or

(b) repayable upon the expiry of a fixed term,

and the corporation may issue investment certificates or other evidences of the money received, appropriate to the trust relationship created thereby.

Idem

(3) Money received by a trust corporation under subsection (2) shall be deemed to be held by it in trust for its depositors and it shall be deemed to guarantee the repayment thereof.

Idem

(4) Notwithstanding subsection (3), a trust corporation may retain the interest and profit resulting from the investment of money received by it under subsection (2) in excess of the amount of interest payable to its depositors in respect thereof.

Idem

(5) Every trust corporation receiving money as authorized by subsection (2) shall earmark and set aside in respect thereof securities, or cash and securities, equal to the full aggregate amount thereof and, for the purposes of this subsection, "cash" includes moneys on deposit and "securities" includes investments authorized under sections 160 to 164 and 168.

Idem

(6) An investment certificate or other evidence of money received issued by a trust corporation shall indicate in a clearly visible manner that it is guaranteed only as against the assets of the corporation earmarked and set aside under subsection (5).

Deposit
insurance

154.—(1) No registered corporation shall exercise the powers mentioned in section 153 unless it is a member of the Canada Deposit Insurance Corporation or its Canadian currency deposits are insured by some other public agency approved by the Superintendent to the maximum amounts permitted by the agency.

Idem

(2) A provincial corporation, with the approval of the Superintendent, may borrow money from the Canada Deposit Insurance Corporation or other similar public agencies approved by the Superintendent and, for such purposes, the

La compagnie peut aussi émettre des débentures ou autres titres de créance appropriés au rapport de créancier à débiteur qui les lie en l'espèce.

(2) La compagnie de fiducie provinciale inscrite et toute autre compagnie de fiducie inscrite qui a capacité à cette fin peuvent, à des fins de placement, recevoir des sommes d'argent :

Dépôts, com-
pagnies de
fiducie

- a) remboursables sur demande ou sur préavis;
- b) remboursables à échéance.

La compagnie peut aussi émettre des certificats de placement ou autres attestations des sommes ainsi reçues et qui sont appropriés au rapport fiduciaire qui les lie en l'espèce.

(3) Les sommes d'argent reçues par une compagnie de fiducie en vertu du paragraphe (2) sont réputées détenues en fiducie pour le compte des déposants et la compagnie est réputée garantir leur remboursement.

Idem

(4) Malgré le paragraphe (3), la compagnie de fiducie peut toucher la partie des intérêts et revenus tirés du placement des sommes d'argent reçues en vertu du paragraphe (2) qui excède les intérêts payables aux déposants à l'égard de ces sommes.

Idem

(5) La compagnie de fiducie qui reçoit des sommes d'argent en vertu du paragraphe (2) met à part soit des valeurs mobilières, soit de la monnaie et des valeurs mobilières, d'un montant égal au total des sommes reçues. Pour l'application du présent paragraphe, «monnaie» s'entend en outre des sommes d'argent confiées à titre de dépôt et «valeurs mobilières» s'entend également des placements autorisés par les articles 160 à 164 et en vertu de l'article 168.

Idem

(6) Le certificat de placement ou l'autre attestation des sommes reçues délivrés par la compagnie de fiducie indiquent clairement qu'ils sont garantis par les seuls biens de la compagnie mis à part aux termes du paragraphe (5).

Idem

154 (1) Nulle compagnie inscrite ne peut exercer les pouvoirs visés à l'article 153, sauf si elle est membre de la Société d'assurance-dépôts du Canada ou que ses dépôts en monnaie canadienne sont assurés, par un autre organisme gouvernemental approuvé par le surintendant, jusqu'aux montants maximaux permis par cet organisme.

Assurance-
dépôt

(2) La compagnie provinciale peut, avec l'approbation du surintendant, contracter des emprunts auprès de la Société

Idem

corporation may mortgage thereto the cash and securities earmarked and set aside under section 153.

Borrowing
multiples,
limits

155.—(1) Subject to subsections (2), (3) and (4), the total amount,

- (a) received as deposits and otherwise borrowed by a registered loan corporation; and
- (b) received as deposits and borrowed by a registered trust corporation,

shall not exceed, at any time, an amount equal to ten times its capital base.

Exclusions
from
calculation

(2) Amounts borrowed by a registered corporation by way of subordinated notes and by way of mortgages on real estate owned by the corporation shall not be included in a determination of a total amount under subsection (1).

Increase in
borrowing
multiple

(3) On the application of a registered corporation, the Superintendent, by order and subject to such terms and conditions as may be set out in the order, may increase the total amount that may be borrowed or received by the corporation to an amount equal to such multiplier in excess of ten times but not exceeding twenty-five times its capital base as may be set out in the order and subsections (1) and (2) shall be deemed to apply to such increased amount, substituting the new multiplier for “ten” in subsection (1).

Borrowing
over limit

(4) A registered corporation may exceed, at any time, the limit on its borrowing multiple as set out in subsection (1) or as set out in an order under subsection (3) if the board of directors has approved, by a resolution passed on an annual basis, the exceeding of the limit and so long as the amount by which the limit is exceeded is invested in a manner prescribed by the regulations.

Copy of
special
resolution

(5) No order shall be made under subsection (3) unless the application of the corporation is accompanied by a certified copy of a special resolution of the corporation supporting the increase requested under subsection (3).

Duty of
Superin-
tendent

(6) At least once each year, the Superintendent shall review the borrowing multiple authorized for each corporation to determine if the borrowing multiple is appropriate.

Subordinated
notes

156.—(1) A registered corporation may borrow money by way of the issue of notes having a denomination of at least \$100,000.

d'assurance-dépôts du Canada ou d'un autre organisme gouvernemental semblable approuvé par le surintendant. La compagnie peut à cette fin grever d'une hypothèque mobilière la monnaie et les valeurs mobilières mises à part aux termes de l'article 153.

155 (1) Sous réserve des paragraphes (2), (3) et (4), la somme totale :

Limitation
des multipli-
cateurs d'em-
prunts

- a) reçue à titre de dépôts et autrement empruntée par la compagnie de prêt inscrite;
- b) reçue à titre de dépôts et empruntée par la compagnie de fiducie inscrite,

ne peut jamais excéder un montant égal à dix fois l'apport en capital de cette compagnie.

(2) Sont exclues de la somme totale visée au paragraphe (1) les sommes empruntées par la compagnie inscrite par voie d'émission de titres subalternes et par voie d'hypothèques grevant ses propres biens immobiliers.

Montants à
exclure

(3) À la requête d'une compagnie inscrite, le surintendant peut, par ordonnance et sous réserve des conditions qu'il y fixe, porter la somme totale que la compagnie peut emprunter ou recevoir à une somme précisée dans l'ordonnance et qui excède dix fois, mais n'excède pas vingt-cinq fois, son apport en capital. Les paragraphes (1) et (2) s'appliquent à cette somme majorée, le nouveau multiplicateur étant substitué au mot «dix» au paragraphe (1).

Majoration
du multiplia-
teur d'em-
prunts

(4) La compagnie inscrite peut dépasser la limite du multiplicateur d'emprunt énoncée au paragraphe (1) ou fixée dans l'ordonnance prise en vertu du paragraphe (3), si le conseil d'administration a approuvé cette mesure au moyen d'une résolution, valable pour une période d'un an. L'excédent doit toutefois faire l'objet d'un placement selon le mode prescrit aux règlements.

Emprunt au-
delà de la
limite permise

(5) Il ne peut être rendu d'ordonnance en vertu du paragraphe (3) que si la requête de la compagnie est accompagnée d'une copie certifiée conforme d'une résolution spéciale adoptée à l'appui de la majoration demandée aux termes de ce paragraphe.

Copie de la
résolution
spéciale

(6) Au moins une fois l'an, le multiplicateur d'emprunt autorisé pour chaque compagnie fait l'objet d'un réexamen de la part du surintendant, qui en vérifie la justesse.

Obligation du
surintendant

156 (1) La compagnie inscrite peut emprunter des sommes d'argent par voie d'émission de titres d'une valeur minimale de 100 000 \$.

Titres subal-
ternes

Idem

(2) A note issued under this section shall be known as a subordinated note and the following provisions apply to every such note:

1. A subordinated note is not a deposit of the issuing corporation and is not insured by the Canada Deposit Insurance Corporation or any similar public agency.
2. In the event of the insolvency or winding up of the corporation, the indebtedness evidenced by each subordinated note ranks equally with the indebtedness evidenced by all other subordinated notes of the corporation and is subordinated in right of payment to all other indebtedness of the corporation.
3. Every subordinated note shall be evidenced by a certificate in a form approved for the corporation by the Superintendent and containing a statement of the terms set out in paragraphs 1 and 2 and such other information as the Superintendent, in approving the form, may require.
4. A subordinated note shall not be issued by a registered corporation except on application to its secretary.

Idem

(3) No registered corporation or person acting on its behalf, in any offering circular, advertisement, correspondence or literature relating to a subordinated note issued or to be issued by the corporation, shall refer to the note otherwise than as a subordinated note and the registered corporation or person, as the case may be, shall indicate clearly therein that the subordinated note is not a deposit that is insured by the Canada Deposit Insurance Corporation or other similar public agency.

Idem

(4) A registered corporation shall not issue a subordinated note if, after the issue of the note, the amount of the outstanding subordinate notes of the corporation would exceed the amount obtained by subtracting its outstanding subordinated notes and the subordinate note or notes it proposes to issue from its capital base.

Pledging for
liquidity
reasons

157.—(1) A registered corporation may pledge any of its own assets as security for a debt obligation of the corporation if the debt obligation is issued in respect of money borrowed to enable the corporation to meet short term requirements for liquid funds arising from its operations and if the total debt

(2) Le titre émis en vertu du présent article porte l'appellation de «titre subalterne» et les dispositions suivantes s'y appliquent : Idem

1. Celui-ci ne constitue pas un dépôt de la compagnie émettrice et ne fait l'objet d'aucune protection d'assurance de la Société d'assurance-dépôts du Canada ou d'un organisme gouvernemental semblable.
2. Dans le cas d'insolvabilité ou de liquidation de la compagnie, toutes les créances attestées par des titres subalternes viennent au même rang et, dans l'ordre de collocation, prennent rang après toutes les autres dettes de la compagnie.
3. Le titre subalterne est attesté par un certificat rédigé dans la forme approuvée pour la compagnie par le surintendant. Les conditions qui figurent aux dispositions 1 et 2 y sont énoncées ainsi que les autres renseignements que le surintendant peut exiger avant d'approuver la forme.
4. La compagnie inscrite ne peut émettre de titre subalterne qu'à la suite d'une demande déposée auprès de son secrétaire.

(3) Dans toute circulaire d'offre, annonce publicitaire, correspondance ou documentation se rapportant à un titre subalterne émis ou à émettre par la compagnie, la compagnie inscrite ou la personne qui agit pour son compte ne peut faire mention du titre subalterne autrement que sous cette appellation. La compagnie ou la personne y indiquent clairement que le titre subalterne ne constitue pas un dépôt faisant l'objet de la protection d'assurance de la Société d'assurance-dépôts du Canada ou d'un autre organisme gouvernemental semblable. Idem

(4) La compagnie inscrite ne doit pas émettre de titres subalternes si, à la suite de cette émission, la somme totale de ses titres subalternes en circulation dépasserait le résultat obtenu en soustrayant du montant de son apport en capital, la somme des titres subalternes déjà en circulation et du ou des titres subalternes dont elle projette l'émission. Idem

157 (1) La compagnie inscrite peut nantir ses propres biens pour garantir un titre de créance, si le titre est émis relativement à un emprunt fait afin de combler les besoins de liquidité à court terme qu'engendrent ses opérations et si la dette obligataire totale de la compagnie à l'origine de ce nantissement n'est pas supérieure à 50 pour cent de l'apport en capital. Nantissement
à des fins de
liquidité

obligation of the corporation in relation to which assets are so pledged does not exceed 50 per cent of the capital base.

Exception

(2) Subsection (1) does not apply so as to prevent a pledge of assets to the Government of Canada with respect to the sale of Canada Savings Bonds or such other transactions as may be named in the regulations.

Notice to
Superin-
tendent

(3) A corporation pledging any asset under subsection (1) shall promptly notify the Superintendent in writing of the amount so secured.

Borrowing
without
security

(4) A registered trust corporation shall not borrow money, except from a bank or a registered corporation, unless,

- (a) it is borrowing by way of subordinated notes; or
- (b) it is borrowing as authorized by subsection (1).

Receiver
prohibited

(5) Any agreement under which a creditor of a registered corporation is authorized by reason of the failure of the corporation to make payment in respect of a debt obligation to appoint a receiver or acquire control of the corporation or of any asset of the corporation, other than an asset pledged under subsection (1) or (2), is void.

Pledge to
restricted
party
prohibited

(6) A registered corporation shall not pledge any of its assets to a restricted party of the corporation.

Liquidity

158. Every registered corporation, at all times, shall maintain liquid assets in such form and amounts and in such manner as is prescribed.

Restriction
on
investments,
etc.

159.—(1) Except as provided in this Act, no registered corporation shall participate in or enter into any investment of its total assets or pledge any of its total assets.

Shares of
financial
institution

(2) No registered corporation shall purchase directly or indirectly,

- (a) shares or subordinated notes of any other corporation except under section 28 or clause 167 (1) (d) or (e); or
- (b) shares of any bank.

Eligible
investments

160.—(1) A registered corporation may invest by way of purchase of or loans on the security of,

(2) Le paragraphe (1) n'a pas pour effet d'empêcher le nantissement de biens en faveur du gouvernement du Canada relativement à la vente d'obligations d'épargne du Canada ou à d'autres opérations mentionnées aux règlements.

Exception

(3) La compagnie qui effectue le nantissement d'un bien en vertu du paragraphe (1) communique immédiatement par écrit au surintendant le montant du nantissement.

Avis au surintendant

(4) La compagnie de fiducie inscrite ne peut emprunter de sommes d'argent, sauf d'une banque ou d'une compagnie inscrite, à moins d'effectuer l'emprunt :

Prêts non assortis d'une sûreté

a) par voie d'émission de titres subalternes;

b) selon le mode autorisé au paragraphe (1).

(5) Est nulle la convention aux termes de laquelle le créancier de la compagnie inscrite, suivant le défaut de celle-ci d'honorer une dette constatée par titre de créance, est autorisé à nommer un séquestre ou à effectuer la mainmise sur celle-ci ou sur ses biens, sauf le bien nanti en vertu des paragraphes (1) ou (2).

Nomination d'un séquestre interdite

(6) La compagnie inscrite ne peut nantir aucun de ses biens en faveur d'une personne assujettie à des restrictions à l'égard de la compagnie.

Nantissement interdit

158 La compagnie inscrite maintient en tout temps des biens liquides sous la forme, de la valeur et de la manière prescrites.

Liquidité

159 (1) La compagnie inscrite ne participe ni ne souscrit à aucun placement de son actif total, ni ne nantit un élément de son actif total, sauf en conformité avec la présente loi.

Restrictions aux placements, etc.

(2) La compagnie inscrite ne peut, directement ou indirectement, acquérir :

Actions d'institutions financières

a) les actions ou les titres subalternes d'une autre compagnie, sauf en vertu de l'article 28 ou des alinéas 167 (1) d) ou e);

b) les actions d'une banque.

160 (1) La compagnie inscrite peut effectuer des placements au moyen de l'achat des biens suivants, ou au moyen de prêts garantis par ceux-ci :

Placements admissibles

mortgages

- (a) mortgages upon improved real estate in Canada so long as the amount paid for or advanced on any mortgage, together with the amount of indebtedness under any mortgage, on the real estate ranking equally with or prior to the mortgage, in which the purchase or loan is made, does not exceed the lending value of the real estate to which the mortgage relates unless,

R.S.C. 1970,
c. N-10

- (i) the loan for which the mortgage is security is approved or insured under the *National Housing Act* (Canada), or

R.S.C. 1970,
cc. I-15, I-16

R.S.O. 1980,
c. 218

- (ii) the excess is guaranteed or insured through an agency of the Government of Canada or of a province or territory of Canada or is insured by a policy of mortgage insurance issued by an insurance company licensed or registered under the *Canadian and British Insurance Companies Act* (Canada), the *Foreign Insurance Companies Act* (Canada) or the *Insurance Act* or similar legislation of any province or territory of Canada;

debentures,
bonds

- (b) debentures, bonds or other evidences of indebtedness,

- (i) of or guaranteed by the Government of Canada or of a province or territory of Canada,

- (ii) of or guaranteed by a foreign country or state forming part of such foreign country where the interest on the debt obligations of such foreign country or state has been paid regularly when due for the previous ten years,

- (iii) of any municipality in Canada or school board in Canada or guaranteed by any municipality in Canada, or secured by rates or taxes levied under the law of any province or territory of Canada on property in such province or territory and collectable by or through the municipality or school board for the jurisdiction in which the property is situated,

- (iv) of any company that are secured by a mortgage to a trust corporation in Canada, other

- a) des hypothèques ou des prêts garantis au moyen d'une hypothèque portant sur des biens immeubles améliorés situés au Canada, à condition que la somme payée en contrepartie ou avancée sur hypothèque, majorée du montant de la dette reliée à toute autre hypothèque de même rang ou qui prime l'hypothèque visée, ne dépasse pas la valeur hypothécable de l'immeuble grevé, sauf dans les cas suivants :
- (i) le prêt garanti par l'hypothèque est un prêt approuvé ou assuré aux termes de la *Loi nationale sur l'habitation* (Canada), hypothèques
S.R.C. 1970,
chap. N-10
- (ii) l'excédent est garanti ou assuré par un organisme du gouvernement du Canada ou d'une province ou d'un territoire du Canada, ou en vertu d'une police d'assurance-hypothèque émise par une compagnie d'assurance titulaire d'un permis ou enregistrée en vertu de la *Loi sur les compagnies d'assurance canadiennes et britanniques* (Canada), la *Loi sur les compagnies d'assurance étrangères* (Canada), la *Loi sur les assurances* ou une loi semblable d'une province ou d'un territoire du Canada; S.R.C. 1970,
chap. I-15,
I-16
L.R.O. 1980,
chap. 218
- b) des débentures, des obligations ou d'autres titres de créance :
- (i) émis ou garantis par le gouvernement du Canada ou d'une province ou d'un territoire du Canada, débentures,
obligations
- (ii) émis ou garantis par un pays étranger ou un État qui en fait partie, pourvu que ceux-ci aient, de façon soutenue au cours des dix dernières années, versé les intérêts sur leurs titres de créance au fur et à mesure de leur échéance,
- (iii) émis par une municipalité du Canada ou un conseil scolaire du Canada ou garantis soit par une municipalité canadienne, soit au moyen d'impôts ou de taxes levés sur des biens conformément aux lois de la province ou du territoire où ils sont situés et recouvrables par la municipalité ou le conseil scolaire du lieu où ils sont situés, ou par leur truchement,
- (iv) émis par une corporation et garantis au moyen d'une hypothèque consentie à une

than the investing corporation or its affiliate, either singly or jointly with another trustee upon improved real estate of such company or other assets of such company of the classes in clause (a) or subclause (i), (ii), (iii) or (v),

- (v) of a company that are secured by the assignment to a trustee of payments that the Government of Canada has agreed to make, if such payments are sufficient to meet the interest as it falls due on the debentures, bonds or other evidences of indebtedness outstanding and to meet the principal amount of the debentures, bonds or other evidences of indebtedness upon maturity;

idem	(c) bonds or debentures of or guaranteed by any company if the company has been in <i>bona fide</i> operation for at least five years;
preferred shares	(d) the preferred shares of a company, where at the date of the purchase, if the investment is by way of purchase, the common shares of the company are authorized as investments by clause (e);
common shares	(e) the fully paid common shares of a company that in a period of five fiscal years that ended less than one year before the date of the purchase or loan has been in <i>bona fide</i> operation for at least five years;
life insurance policy	(f) mortgages or assignments of life insurance policies but only by way of loan and only if at the date of the loan such policy has an ascertained cash surrender value admitted by the insurer at least equal to the amount of the loan;
deposits in banks	(g) deposits in or receipts, deposit notes, certificates of deposit, acceptances and other similar instruments issued or endorsed by a bank; and
deposits in registered corporation or credit union	(h) deposits in a registered corporation or a credit union or caisse populaire.

compagnie de fiducie au Canada, à l'exclusion de la compagnie qui effectue le placement ou du membre du même groupe, soit seule, soit en commun avec un autre fiduciaire et qui porte sur des biens immeubles améliorés ou d'autres biens de celle-ci dans les catégories visées à l'alinéa a) ou aux sous-alinéas (i), (ii), (iii) ou (v),

- (v) émis par une corporation et garantis au moyen de la cession en faveur d'un fiduciaire de paiements que le gouvernement du Canada a convenu d'effectuer, si ces paiements suffisent à acquitter les intérêts au fur et à mesure qu'ils sont échus, sur les débentures, obligations ou autres titres de créance en circulation, ainsi que le montant en principal de ces titres à leur échéance;
- c) des obligations ou des débentures émises ou garanties par une corporation si celle-ci est exploitée effectivement depuis au moins cinq ans; idem
- d) des actions privilégiées d'une corporation, si à la date de l'achat, lorsque le placement s'effectue au moyen d'achat, les placements dans les actions ordinaires de la corporation sont autorisés par l'alinéa e); actions privilégiées
- e) des actions ordinaires entièrement libérées d'une corporation qui, au cours de l'exercice de cinq ans prenant fin moins d'un an avant la date de l'achat ou du prêt, a été exploitée effectivement pendant au moins cinq ans; actions ordinaires
- f) des hypothèques ou des cessions de polices d'assurance-vie, seulement au moyen de prêts et si à la date du prêt ces polices ont une valeur de rachat précise et reconnue par l'assureur comme étant au moins égale au montant du prêt; polices d'assurance-vie
- g) des dépôts bancaires ou des récépissés, des billets ou des certificats de dépôts, acceptations ou autres effets semblables délivrés ou visés par une banque; dépôts auprès d'une banque
- h) des dépôts auprès d'une compagnie inscrite ou d'une caisse populaire ou *credit union*. dépôts auprès d'une compagnie inscrite ou d'une caisse populaire

Government
guaranteed
loans,
personal
loans,
commercial
lending
R.S.C. 1970,
cc. S-17,
F-3, F-22,
S-10

(2) A registered corporation may invest,

- (a) if designated as a bank or a lender, as the case may be, under the *Canada Student Loans Act*, the *Farm Improvement Loans Act* (Canada), the *Fisheries Improvement Loans Act* (Canada) or the *Small Businesses Loans Act* (Canada), by lending money by way of guaranteed loans under and in accordance with the Acts for which it has been designated;
- (b) by making personal loans to any individual, with or without security, not exceeding those amounts as may be prescribed; and
- (c) by making loans for business or commercial purposes not authorized by any other provision of this Act payable on demand or in less than one year to companies, partnerships, proprietorships and joint ventures.

Leases and
conditional
sale
agreements

(3) A registered corporation may invest by way of purchase of personal property and the lease of it to a lessee or by way of loan to a lessee or conditional purchaser where the evidence of the investment is a lease of personal property or an instrument similar to a lease of personal property or a conditional sales contract but only if the investment is for a fixed term and,

- (a) the lessee or conditional purchaser is the Government of Canada or of a province or territory of Canada or any agency thereof or any municipality in Canada; or
- (b) the lessee or conditional purchaser is a company incorporated in Canada or is a subsidiary of a company incorporated in Canada and, at the date of the investment, the company had been in *bona fide* operation at least five years.

Restrictions
on personal
loans,
commercial
lending,
leases
and
conditional
sales
agreements

(4) A registered corporation shall not make investments,

- (a) by way of a loan under clause (1) (a), (b), (c), (d), (e), (g) or (h) if the amount of the loan exceeds at any time the market value of the collateral;
- (b) under clause (2) (b) or (c) or clause (3) (b) unless,

(2) La compagnie inscrite peut effectuer des placements :

- a) en tant que banque ou institution prêteuse, le cas échéant, désignée aux termes de la *Loi canadienne sur les prêts aux étudiants*, la *Loi sur les prêts destinés aux améliorations agricoles* (Canada), la *Loi sur les prêts aidant aux opérations de pêche* (Canada) ou la *Loi sur les prêts aux petites entreprises* (Canada), au moyen de prêts de sommes d'argent à titre de prêts garantis en conformité avec les lois précitées en vertu desquelles la compagnie est ainsi désignée;
- b) au moyen de prêts personnels consentis à des particuliers, assortis ou non de sûretés, dont les montants ne dépassent pas les maximums prescrits;
- c) au moyen de prêts qui sont consentis à des compagnies, des sociétés, des entreprises personnelles ou communes à des fins commerciales et qui ne sont pas déjà autorisés par une autre disposition de la présente loi, ces prêts étant remboursables sur demande ou en moins d'un an.

Prêts garantis par le gouvernement, prêts personnels et commerciaux S.R.C. 1970, chap. S-17, F-3, F-22, S-10

(3) La compagnie inscrite peut effectuer un placement au moyen de l'achat de biens meubles et de leur location à un locataire, ou au moyen d'un prêt à un locataire ou à un acquéreur sous condition, si le titre qui constate ce placement est un bail mobilier, un acte juridique semblable ou un contrat de vente conditionnelle, pourvu que le placement soit d'une durée déterminée et :

Baux et contrats de vente conditionnelle

- a) que le locataire ou l'acquéreur sous condition soit le gouvernement du Canada ou d'une province ou d'un territoire du Canada, l'un de leurs organismes ou une municipalité canadienne;
- b) que le locataire ou l'acquéreur sous condition soit une corporation constituée au Canada ou sa filiale et qu'à la date du placement, la corporation ait été exploitée effectivement pendant au moins cinq ans.

(4) La compagnie inscrite ne peut effectuer des placements :

- a) au moyen de prêts aux termes des alinéas (1) a), b), c), d), e), g) ou h), si le montant du prêt est supérieur, à n'importe quel moment, à la valeur marchande de la sûreté;
- b) aux termes des alinéas (2) b) ou c) ou de l'alinéa (3) b), à moins que :

Restrictions aux prêts personnels et commerciaux, aux baux et contrats de vente conditionnelle

- (i) it is authorized by the terms of its registration to make such class of investments, and
- (ii) it complies with the terms and conditions, if any, imposed on the corporation in its registration with respect to such class of investments;
- (c) under clause (2) (b) unless the aggregate total of such investments is 20 per cent or less of the total assets of the corporation or such lower percentage as the Superintendent may approve; or
- (d) under clause (2) (c) or clause (3) (b) unless,
 - (i) the capital base of the corporation is equal to or exceeds \$15,000,000, and
 - (ii) the aggregate total of such investments is 10 per cent or less of the total assets of the corporation or such lower percentage as the Superintendent may approve.

Real estate
for the
production
of income

161.—(1) Subject to subsection (2), a registered corporation, by way of purchase, may invest in improved real estate in Canada for the production of income.

Idem

(2) The total book value on a gross basis of all investments in real estate under this section and section 162, whether by a corporation or by a subsidiary of the corporation, shall not exceed 10 per cent of the total assets of the corporation and not more than 1 per cent of the total assets of the corporation may be invested in any one parcel of real estate purchased under this section.

Real estate
for own use

162.—(1) Subject to subsection 161 (2), a registered corporation, by way of purchase, may invest in improved real estate in Canada that is or is to be occupied by the corporation for its own use.

Idem

(2) For the purposes of this section, real estate purchased by a subsidiary of a registered corporation that is occupied and used by the subsidiary for its own purposes shall be deemed to be real estate purchased by the registered corporation under this section.

Exclusion of
foreclosed
real
estate from
determination
of
total book
value

163. The book value of real estate that has been mortgaged to a corporation or any of its subsidiaries and that has been acquired by the corporation or the subsidiary to protect its investment and of real estate that has been conveyed to it or any of its subsidiaries in satisfaction of debts previously contracted in the course of the corporation's business or that

- (i) d'une part, les conditions dont est assortie son inscription autorisent les placements de cette catégorie,
 - (ii) d'autre part, la compagnie ne se soit confor-
mée aux conditions propres à cette catégorie
de placements imposées à la compagnie dans
le cadre de l'inscription, le cas échéant;
- c) aux termes de l'alinéa (2) b), à moins que la somme totale de ces placements ne représente que 20 pour cent ou moins de l'actif total de la compagnie ou le pourcentage plus faible que peut approuver le surintendant;
- d) aux termes des alinéas (2) c) ou (3) b), à moins que :
- (i) d'une part, l'apport en capital de la compa-
gnie ne soit de 15 000 000 \$ ou plus,
 - (ii) d'autre part, la somme totale de ces place-
ments ne représente que 10 pour cent ou
moins de l'actif total de la compagnie ou le
pourcentage plus faible que peut approuver le
surintendant.

161 (1) Sous réserve du paragraphe (2), la compagnie inscrite peut effectuer des placements au moyen de l'achat de biens immeubles améliorés situés au Canada, afin de produire un revenu.

Les biens
immeubles
productifs de
revenus

(2) La valeur comptable totale de tous les placements immobiliers aux termes du présent article et de l'article 162, calculée sur une base brute, qu'ils soient effectués par une compagnie ou par ses filiales, ne peut dépasser 10 pour cent de l'actif total de la compagnie. Cette dernière ne peut en outre affecter plus de 1 pour cent de la valeur de son actif total à l'achat aux termes du présent article d'un bien immeuble en particulier.

Idem

162 (1) Sous réserve du paragraphe 161 (2), la compagnie inscrite peut effectuer des placements au moyen de l'achat de biens immobiliers améliorés situés au Canada qu'elle occupe ou occupera elle-même.

Biens immeu-
bles destinés
à son propre
usage

(2) Pour l'application du présent article, le bien immobilier dont la filiale d'une compagnie inscrite a fait l'acquisition et qu'elle occupe et utilise à ses propres fins est réputé acquis par la compagnie inscrite aux termes du présent article.

Idem

of the subsidiary need not be included in determining total book value of real estate for the purposes of subsection 161 (2).

“Open
basket”

164.—(1) A registered corporation, by way of purchase or loan, may make investments not authorized by section 160, 161 or 162 if the investment is not prohibited under any other provision of this Act so long as the total book value of investments made under this section and held by the corporation does not exceed 5 per cent of the total assets of the corporation.

Idem

(2) Subsection (1) does not apply so as to,

- (a) enlarge the authority conferred by this Act to invest in mortgages, or to lend on the security of real estate; or
- (b) affect the limit of 10 per cent of the total assets that may be invested in real estate under section 161.

Idem

(3) Where a corporation has received the approval of the Superintendent to make investments under clause 160 (2) (b) or (c) or clause 160 (3) (b), the corporation shall not make any such investments under subsection (1).

Investment
limits

165.—(1) Notwithstanding any other provision of this Act, a corporation shall maintain at all times at least 50 per cent of its total assets, excluding assets of subsidiaries, in,

- (a) bonds, debentures or other evidences of indebtedness,
 - (i) of or guaranteed by the Government of Canada or any province or territory of Canada,
 - (ii) of any municipality or school board in Canada, or guaranteed by any municipality in Canada, or secured by rates or taxes levied under the law of any province or territory of Canada on property in such province or territory and collectable by or through the municipality or school board for the jurisdiction in which such property is situated;

163 Il n'est pas nécessaire d'inclure, aux fins d'établir la valeur comptable des biens immeubles pour l'application du paragraphe 161 (2), les biens immeubles hypothéqués en faveur d'une compagnie ou de ses filiales dont elles ont fait l'acquisition pour la protection de leurs placements. Il en est de même des biens immeubles dont il leur a été fait cession en paiement de dettes préalablement contractées dans le cours de leurs affaires.

Exclusion de la valeur comptable des immeubles qui font l'objet d'une forclusion

164 (1) La compagnie inscrite peut, au moyen d'acquisitions ou de prêts, effectuer des placements qui ne sont pas autorisés par les articles 160, 161 ou 162, pourvu que le placement ne soit pas prohibé aux termes d'une autre disposition de la présente loi et que la valeur comptable des placements effectués aux termes du présent article et que possède la compagnie inscrite ne soit pas supérieure à 5 pour cent de son actif total.

Placements divers

(2) Le paragraphe (1) n'a pas pour effet :

Idem

- a) d'étendre le pouvoir accordé par la présente loi d'effectuer des placements hypothécaires ou de consentir des prêts garantis par des biens immeubles;
- b) de modifier la limite de 10 pour cent de l'actif total qui peut être placé dans des biens immeubles en vertu de l'article 161.

(3) La compagnie qui a reçu l'approbation du surintendant en vue d'effectuer des placements en vertu des alinéas 160 (2) b) ou c) ou (3) b) ne peut effectuer de tels placements en vertu du paragraphe (1).

Idem

165 (1) Malgré toute autre disposition de la présente loi, au moins 50 pour cent de l'actif total de la compagnie, à l'exclusion de l'actif de ses filiales, se compose :

Nature des placements

- a) d'obligations, de débentures ou d'autres titres de créance :
 - (i) du gouvernement du Canada ou d'une province ou d'un territoire du Canada ou garanti par ces derniers,
 - (ii) d'une municipalité ou d'un conseil scolaire au Canada ou garantis soit par une municipalité canadienne, soit au moyen d'impôts ou de taxes levés sur des biens conformément aux lois de la province ou du territoire où ils sont situés et recouvrables par la municipalité ou le conseil scolaire où ils sont situés, ou par leur truchement;

- (b) first mortgages, upon real estate in Canada;
- (c) bonds, debentures or other evidences of indebtedness of a company that are secured by the assignment to a trustee of payments that the Government of Canada has agreed to make, if such payments are sufficient to meet the interest as it falls due on the bonds, debentures or other evidences of indebtedness outstanding and to meet the principal amount of the bonds, debentures or other evidences of indebtedness upon maturity;
- (d) deposits in or receipts, deposit notes, certificates of deposit, acceptances and other similar instruments issued or endorsed by a bank;
- (e) deposits in a registered corporation;
- (f) bonds or debentures of banks;
- (g) such other investments as may be prescribed; or
- (h) any combination of cash and the investments referred to in clauses (a) to (g).

Third and subsequent mortgages

(2) Investments by a registered corporation in third and subsequent mortgages shall be limited to 2 per cent of the total assets of the corporation.

Idem

(3) For the purposes of subsection (2), an investment in a third or subsequent mortgage by a subsidiary of a corporation shall be deemed to be an investment in the mortgage by the corporation.

Shares, etc.

(4) A registered corporation shall not make an investment in shares, bonds or debentures of companies if, after the investment, the corporation will hold shares, bonds and debentures of companies carried on the corporation's books, in aggregate, at more than 25 per cent of its total assets.

Idem

(5) For the purposes of subsection (4), an investment in shares, bonds or debentures by a subsidiary of a corporation, other than a mutual fund subsidiary of the corporation, shall be deemed to be an investment by the corporation.

Restrictions on amount of single investments

166.—(1) No corporation shall directly or indirectly,

- b) d'hypothèques de premier rang grevant des biens immeubles situés au Canada;
- c) d'obligations, de débentures ou d'autres titres de créance d'une corporation, garantis par la cession en faveur d'un fiduciaire de paiements que le gouvernement du Canada a convenu d'effectuer, si ces paiements suffisent à acquitter, au fur et à mesure qu'ils sont échus, les intérêts sur les obligations, débentures ou autres titres de créance en circulation, ainsi que le montant en principal de ces titres à leur échéance;
- d) de dépôts bancaires ou de récépissés, de billets ou de certificats de dépôts, d'acceptations ou d'autres effets semblables délivrés ou visés par une banque;
- e) de dépôts auprès d'une compagnie inscrite;
- f) d'obligations ou de débentures de banques;
- g) d'autres placements prescrits;
- h) d'une combinaison de sommes en espèces et de placements visés aux alinéas a) à g).

(2) La compagnie inscrite ne peut placer plus de 2 pour cent de son actif total dans des hypothèques de troisième rang ou de rang postérieur.

Hypothèques de troisième rang et autres de rang postérieur

(3) Pour l'application du paragraphe (2), est réputé un placement de la compagnie le placement de sa filiale effectué dans des hypothèques de troisième rang ou de rang postérieur.

Idem

(4) La compagnie inscrite ne peut effectuer de placement dans des actions, obligations ou débentures de corporations dont l'effet serait de porter, au regard de leur valeur comptable, la somme des valeurs de corporations ainsi détenues par la compagnie inscrite à plus de 25 pour cent de son actif total.

Actions, obligations et débentures

(5) Pour l'application du paragraphe (4), est réputé un placement de la compagnie le placement effectué dans des actions, obligations ou débentures par sa filiale, à l'exception d'une filiale à fonds mutuel.

Idem

166 (1) Nulle compagnie ne doit, directement ou indirectement :

Limites au montant des placements particuliers

R.S.C. 1970,
c. N-10

- (a) except as to securities issued or guaranteed by the Government of Canada, including mortgages insured under the *National Housing Act* (Canada), or the government of any province of Canada or by any municipality in Canada, invest, by way of purchase from or loans to persons that to the knowledge of the corporation are related to one another, an amount exceeding 1 per cent of the corporation's total assets; or
- (b) make any investment the effect of which will be that the corporation will hold more than 10 per cent of the voting shares of any one body corporate other than a subsidiary of the corporation.

Securities
dealers

(2) Notwithstanding clause (1) (b), a registered corporation, with the approval of the Superintendent, may acquire such percentage as is prescribed by a regulation made under the *Securities Act*, of the voting shares of a dealer within the meaning of that Act.

R.S.O. 1980,
c. 466

Investment in
subsidiaries

167.—(1) Subject to such terms and conditions concerning subsidiaries as may be prescribed, a registered corporation may establish or acquire as a subsidiary,

- (a) any company incorporated in Canada to acquire, hold, maintain, improve, sell, lease or manage real estate or leaseholds or to act as agent in the sale or purchase of real estate or leaseholds;
- (b) with the prior approval of the Superintendent, any company incorporated other than in Canada to acquire, hold, maintain, lease or manage real estate or leaseholds or act as agent in the sale or purchase of real estate or leaseholds;
- (c) with the prior approval of the Superintendent and subject to such terms and conditions as the Superintendent may impose or as may be prescribed, any company to carry on any other business activity reasonably ancillary to the business of a corporation;
- (d) a loan corporation in Canada, if the investing corporation is a trust corporation; and
- (e) a trust corporation in Canada, if the investing corporation is a loan corporation.

- a) effectuer au moyen d'achats ou de prêts auprès de personnes que la compagnie sait être liées entre elles, un placement qui représente plus de 1 pour cent de son actif total, sauf s'il s'agit de valeurs mobilières émises ou garanties par le gouvernement du Canada, y compris les hypothèques assurées en vertu de la *Loi nationale sur l'habitation* (Canada), par le gouvernement d'une de ses provinces ou par une municipalité du Canada;
- b) effectuer un placement qui porterait à plus de 10 pour cent le nombre d'actions assorties du droit de vote que celle-ci détient auprès d'une personne morale particulière qui n'est pas sa filiale.

S.R.C. 1970,
chap. N-10

(2) Malgré l'alinéa (1) b), la compagnie inscrite peut, avec l'approbation du surintendant, acquérir le pourcentage prescrit par un règlement pris en application de la *Loi sur les valeurs mobilières* des actions assorties du droit de vote d'un courtier au sens de cette loi.

Courtiers en
valeurs mobilières
L.R.O. 1980,
chap. 466

167 (1) Sous réserve des conditions prescrites en ce qui concerne les filiales, la compagnie inscrite peut constituer ou acquérir à titre de filiale :

Placements
auprès de
filiales

- a) une corporation constituée au Canada dans le but d'acquérir, de détenir, de conserver, d'améliorer, de vendre, de louer ou d'administrer des biens immeubles ou des tenures à bail ou de servir de mandataire lors de l'acquisition ou de la vente de ces biens;
- b) avec l'approbation préalable du surintendant, une corporation constituée en dehors du Canada aux fins d'acquérir, de détenir, de conserver, d'améliorer, de louer ou d'administrer des biens immeubles ou des tenures à bail ou de servir de mandataire lors de l'acquisition ou de la vente de ces biens;
- c) avec l'approbation préalable du surintendant et sous réserve des conditions que fixe ce dernier ou qui sont prescrites, toute corporation dans le but d'exercer une activité raisonnablement accessoire à celle de la compagnie;
- d) une compagnie de prêt au Canada, si l'investisseur est une compagnie de fiducie;
- e) une compagnie de fiducie au Canada, si l'investisseur est une compagnie de prêt.

Prohibition (2) A subsidiary described in subsection (1) shall not invest its funds except as provided for registered corporations in this Act.

Idem (3) Subsection (2) does not apply to a subsidiary described in clause (1) (c) so long as the corporation satisfies all terms and conditions imposed by the Superintendent or the regulations.

Idem (4) A registered corporation shall not make an investment in or guarantee any obligation of a subsidiary of the corporation if, after the making of the investment or the giving of the guarantee, the total book value of all such investments and guarantees will exceed 5 per cent of the corporation's total assets.

Idem (5) Subsection (4) does not apply to investments in or guarantees of the obligations of a subsidiary described in clause (1) (d) or (e).

Other
investments
authorized

168. The Lieutenant Governor in Council may authorize the acceptance by a registered corporation of bonds, notes, shares, debentures or other assets not fulfilling the requirements of this Act,

- (a) obtained in payment or part payment for securities sold by the corporation;
- (b) obtained under a *bona fide* arrangement for the reorganization of a body corporate whose assets were previously owned by the corporation;
- (c) obtained under an amalgamation with another body corporate of the body corporate whose securities were previously owned by the corporation;
- (d) obtained for the *bona fide* purpose of protecting investments of the corporation;
- (e) obtained by virtue of the purchase by the corporation of the assets of another corporation; or
- (f) obtained by virtue of realizing on collateral for a loan where the collateral is shares in a body corporate and the effect of realizing such security is that a registered corporation shall hold more than 10 per cent of the voting shares in any one body corporate,

(2) La filiale visée au paragraphe (1) ne peut placer ses fonds qu'en conformité avec les dispositions de la présente loi applicables aux compagnies inscrites. Interdiction

(3) Le paragraphe (2) ne s'applique pas à la filiale visée à l'alinéa (1) c) tant que la compagnie se conforme à toutes les conditions fixées par le surintendant ou dans les règlements. Idem

(4) La compagnie inscrite ne peut effectuer de placement auprès de sa filiale, ni cautionner les obligations de cette dernière, si ces opérations avaient pour effet de porter, au regard de la valeur comptable, la somme totale de ces placements et cautionnements à plus de 5 pour cent de son actif total. Idem

(5) Le paragraphe (4) ne s'applique ni aux placements dans la filiale visée aux alinéas (1) d) ou e) ni aux cautionnements des obligations de cette dernière. Idem

168 Le lieutenant-gouverneur en conseil peut autoriser une compagnie inscrite à accepter des obligations, billets, actions, débetures ou autres éléments d'actif non conformes aux exigences de la présente loi et obtenus : Acceptation
d'autres pla-
cements

- a) en paiement total ou partiel de valeurs mobilières vendues par la compagnie;
- b) de bonne foi aux termes d'un arrangement conclu lors de la réorganisation d'une personne morale dont les éléments d'actif étaient auparavant la propriété de la compagnie;
- c) aux termes de la fusion d'une personne morale dont les valeurs mobilières étaient auparavant la propriété de la compagnie, avec une autre personne morale;
- d) de bonne foi dans le but de protéger les placements de la compagnie;
- e) lors de l'acquisition par la compagnie de l'actif d'une autre compagnie;
- f) par la réalisation de la sûreté d'un prêt composée d'actions d'une personne morale et qui porte à plus de 10 pour cent le nombre d'actions assorties du droit de vote d'une personne morale particulière que détient la compagnie.

but the bonds, notes, shares or debentures or other assets whose acceptance is so authorized shall be sold and disposed of within five years after the acquisition thereof or, within such further time not exceeding one year as the Lieutenant Governor in Council, on the report of the Superintendent, may fix and determine, unless it can be shown to the satisfaction of the Superintendent that the bonds, notes, shares, debentures or other assets whose acceptance is so authorized are not inferior in status or value to the securities for which they have been substituted.

Additional
collateral

169. A registered corporation may take real or personal property as collateral security for any advance or for any debt due to the corporation in addition to any collateral required under this Act.

Allocation of
security

170. A single loan that is secured by two or more assets or classes of assets that would, but for this section, not be an investment of the corporation permitted under this Act may be divided into different amounts and considered as separate loans with respect to each asset or class of assets for the purposes of determining whether the loan is permitted under this Act.

Common
trust
funds
authorized

171.—(1) Notwithstanding this or any other Act, a registered provincial trust corporation and any other registered trust corporation that has capacity to do so may, unless the trust instrument otherwise directs, invest money held by it as a fiduciary, other than deposits, in one or more common trust funds of the trust corporation and, where trust money is held by the trust corporation as a co-trustee, the investment thereof in a common trust fund may only be made by the trust corporation with the consent of its co-trustees.

Exception

(2) A common trust fund authorized by subsection (1) shall not include any money in relation to a trust established exclusively for savings plans registered under the *Income Tax Act* (Canada).

R.S.C. 1952,
c. 146

Idem

(3) No common trust fund shall be established or operated except in the prescribed manner.

Passing of
accounts

(4) A trust corporation may, at any time, and shall, when required in writing by the Superintendent so to do under subsection (5), file and pass an account of its dealings with respect to a common trust fund in the surrogate court having jurisdiction in the place in which the fund is being administered, and the court, on the passing of the account, has, subject to this section, the same duties and powers as in the case of the passing of executors' accounts.

Les éléments d'actif dont l'acceptation est autorisée sont aliénés dans les cinq ans de leur acquisition ou au cours de la période plus longue, n'excédant pas un an, que peut fixer le lieutenant-gouverneur en conseil sur recommandation du surintendant. Toutefois, il n'est pas nécessaire d'aliéner ces éléments d'actif s'il peut être démontré à la satisfaction du surintendant que leur valeur ou leur qualité ne sont pas inférieures à celles des valeurs mobilières qu'ils remplacent.

169 La compagnie inscrite peut accepter, outre la garantie exigée aux termes de la présente loi, des biens meubles ou immeubles à titre de sûretés accessoires affectées à la garantie de ses créances.

Garantie supplémentaire

170 Aux fins de déterminer si un prêt est permis aux termes de la présente loi, le prêt simple garanti par deux ou plusieurs biens ou catégories de biens qui, n'était le présent article, ne serait pas permis comme placement, peut être divisé en plusieurs montants et traité comme s'il constituait des prêts distincts se rapportant chacun à un bien ou à une catégorie de biens.

Division en plusieurs montants

171 (1) Malgré la présente loi ou toute autre loi, la compagnie de fiducie provinciale inscrite et toute autre compagnie de fiducie inscrite ayant cette capacité peuvent, sauf disposition contraire contenue à l'acte de fiducie, placer des sommes d'argent qu'elle détient à titre de fiduciaire, à l'exception des dépôts, dans un ou plusieurs des fonds en fiducie collectifs de la compagnie. Si celle-ci détient ces sommes en qualité de cofiduciaire elle n'effectue ce placement qu'avec le consentement de ses cofiduciaires.

Création de fonds en fiducie collectifs permise

(2) Sont exclues du fonds en fiducie collectif visé au paragraphe (1) les sommes d'argent reliées à la fiducie créée uniquement aux fins de constituer un régime d'épargne enregistré aux termes de la *Loi de l'impôt sur le revenu* (Canada).

Exception

S.R.C. 1952, chap. 146

(3) La création et l'exploitation du fonds en fiducie collectif se font selon les modalités prescrites.

Idem

(4) Une compagnie de fiducie peut à tout moment déposer auprès du tribunal successoral du ressort de gestion du fonds en fiducie collectif le compte des opérations qui s'y rapportent et en obtenir l'approbation. Elle y est toutefois tenue si le surintendant l'exige par écrit en vertu du paragraphe (5). Sous réserve du présent article, les attributions du tribunal sont alors les mêmes que dans le cas de l'approbation des comptes de l'exécuteur testamentaire.

Approbation du compte

When
account
final

(5) An account filed with the Superintendent in accordance with the regulations, except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and as to the trust corporation's administration of the common trust fund for the period covered by the account, unless within six months after the date upon which the account is so filed, the Superintendent requires in writing that the account be filed and passed in the surrogate court.

Accounting
only
necessary
under this
section or
regulations

(6) Notwithstanding any other Act or law, a trust corporation shall not be required to render an account of its dealings with a common trust fund except as provided in this section or the regulations.

Time and
place for
passing of
account

(7) Upon the filing of an account under this section, the court shall fix a time and place for the passing of the account, and the trust corporation shall cause a written notice of the appointment and a copy of the account to be served upon the Superintendent at least fourteen days before the date fixed for the passing, and the trust corporation shall not be required to give any other notice of the appointment.

Form of
account

(8) For the purposes of an accounting under this section, an account may be filed in the form of audited accounts filed with the Superintendent in accordance with the regulations.

Superin-
tendent
to represent
persons
having
interest in
fund

(9) Upon the passing of an account under this section, the Superintendent shall represent all persons having an interest in the funds invested in the common trust fund, but any such person has the right, at the person's own expense, to appear personally or to be separately represented.

Approval of
court

(10) Where an account filed under this section has been approved by the surrogate court, the approval, except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and as to the trust corporation's administration of the common trust fund for the period covered by the account.

Costs

(11) The costs of passing an account under this section shall be charged to principal and income of the common trust fund in such proportions as the surrogate court considers proper.

Mutual funds
R.S.O. 1980,
c. 466

172. A registered trust corporation that administers, promotes or operates a mutual fund to which the *Securities Act* applies or that has a subsidiary that administers, promotes or

(5) Sauf le cas de preuve d'erreur ou de fraude, le compte déposé auprès du surintendant conformément aux règlements est concluant et lie toutes les parties intéressées quant à son contenu et à la gestion par la compagnie du fonds en fiducie collectif pour la période qui y est précisée, à moins que le surintendant n'exige par écrit, dans les six mois du dépôt de ce compte, que celui-ci soit déposé devant le tribunal successoral pour approbation.

Compte définitif

(6) Malgré toute autre loi ou règle de droit, la compagnie de fiducie ne peut pas être tenue de rendre compte de ses opérations reliées au fonds en fiducie collectif autrement qu'aux termes du présent article et des règlements.

Reddition de comptes conforme au présent article et aux règlements : la seule nécessaire

(7) Lors du dépôt d'un compte aux termes du présent article, le tribunal fixe la date, l'heure et le lieu de l'approbation. La compagnie de fiducie fait signifier au surintendant, au moins quatorze jours avant la date ainsi fixée, un avis écrit de la convocation accompagné d'une copie du compte. La compagnie ne peut pas être tenue de donner d'autre avis de la convocation.

Date et lieu de l'approbation du compte

(8) Aux fins de l'approbation du compte aux termes du présent article, le compte déposé peut revêtir la forme des comptes vérifiés déposés auprès du surintendant conformément aux règlements.

Forme que revêt le compte

(9) Lors de l'approbation d'un compte aux termes du présent article, le surintendant représente l'ensemble des titulaires de droits sur les sommes d'argent placées dans le fonds en fiducie collectif. Ces titulaires ont toutefois le droit, à leurs frais, de comparaître en personne ou de se faire représenter par un mandataire.

Le surintendant représente les personnes qui y ont un droit

(10) Sauf le cas de preuve d'erreur ou de fraude, si le compte déposé aux termes du présent article a reçu l'approbation du tribunal successoral, cette approbation est concluante et lie toutes les parties intéressées quant à son contenu et quant à la gestion par la compagnie du fonds en fiducie collectif pour la période qui y est précisée.

Approbation du tribunal

(11) Les frais de l'approbation d'un compte aux termes du présent article sont imputés à la fois au principal et aux revenus du fonds en fiducie collectif dans la proportion jugée convenable par le tribunal successoral.

Frais

172 La compagnie de fiducie inscrite qui assure la gestion, la promotion ou l'exploitation d'un fonds mutuel auquel s'applique la *Loi sur les valeurs mobilières*, ou dont la filiale

Fonds mutuels

L.R.O. 1980, chap. 466

operates such a mutual fund shall file with the Superintendent proof of the fund's acceptability to the Ontario Securities Commission within thirty days of receiving notice from the Commission of the fund's acceptability.

Extent of
liability
and powers

173.—(1) The liability of a registered trust corporation to persons interested in an estate held by the trust corporation as executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee is the same as if the estate had been held by a private person in the like capacity, and the corporation's powers are the same.

Approval of
the
corporation
as executor,
etc.

(2) Where a registered trust corporation is authorized to execute the office of executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee, and the Lieutenant Governor in Council approves of the corporation being accepted as a trust corporation for the purposes of the Supreme Court, every court or judge having authority to appoint such an officer may, with the consent of the corporation, appoint the corporation to exercise any of such offices in respect of any estate or person under the authority of such court or judge, or may grant to the corporation probate of any will in which the corporation is named as an executor.

Appointment
as trustee

(3) A registered trust corporation approved by the Lieutenant Governor in Council under subsection (2),

- (a) may be appointed to be a sole trustee, notwithstanding that but for this Act it would be necessary to appoint more than one trustee; and
- (b) may be appointed to any of the offices mentioned in subsection (2) jointly with another person,

and the appointment may be made whether the trustee is required under a deed, will or document creating a trust or whether the appointment is under the *Trustee Act* or otherwise.

R.S.O.1980,
c. 512

Security not
required

(4) Notwithstanding any rule, practice or statutory provision, it is not necessary for a trust corporation approved under subsection (2) to give any security for the due performance of its duty as executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee unless so ordered by a court.

accomplit de telles fonctions, dépose auprès du surintendant la preuve que la Commission des valeurs mobilières de l'Ontario a jugé ce fonds mutuel acceptable, dans les trente jours de la réception de l'avis de la Commission à cet effet.

173 (1) Les obligations de la compagnie de fiducie inscrite, en sa qualité d'exécuteur testamentaire, d'administrateur successoral, de fiduciaire, de séquestre, de liquidateur, de cessionnaire, de tuteur ou de curateur, envers les personnes qui ont un droit sur la succession ou sur les biens visés, selon le cas, sont identiques à celles du particulier qui a reçu le même mandat. Il en est de même des pouvoirs de la compagnie à cet égard.

Étendue des obligations et pouvoirs

(2) Le tribunal ou le juge fondé à désigner un exécuteur testamentaire, un administrateur successoral, un fiduciaire, un séquestre, un liquidateur, un cessionnaire, un tuteur ou un curateur peut, avec le consentement de la compagnie de fiducie inscrite qui est autorisée à agir en cette qualité et qui a été agréée par le lieutenant-gouverneur en conseil à cet égard pour les fins de la Cour suprême, confier à cette compagnie les fonctions précitées à l'égard de la succession ou de la personne qui relève de la compétence de ce tribunal ou de ce juge. Le tribunal ou le juge peut aussi lui délivrer, en sa qualité d'exécuteur testamentaire visé au testament, les lettres d'homologation du testament.

Agrément de la compagnie à titre d'exécuteur testamentaire, etc.

(3) La compagnie de fiducie inscrite agréée par le lieutenant-gouverneur en conseil aux termes du paragraphe (2), peut être nommée :

Nomination à titre de fiduciaire

- a) fiduciaire unique quoiqu'il eût été nécessaire, n'eût été la présente loi, de désigner plus d'un fiduciaire;
- b) à n'importe laquelle des fonctions visées au paragraphe (2) en commun avec une autre personne.

Elle peut être nommée à ces titres, que la nomination soit exigée aux termes d'un acte, d'un testament ou d'un autre écrit qui crée une fiducie ou qu'elle soit faite en vertu de la *Loi sur les fiduciaires* ou autrement.

L.R.O. 1980, chap. 512

(4) Malgré toute règle, pratique ou disposition d'une loi, la compagnie de fiducie agréée en vertu du paragraphe (2) n'est pas tenue de fournir de cautionnement en garantie de l'exécution de ses obligations d'exécuteur testamentaire, d'administrateur successoral, de fiduciaire, de séquestre, de liquidateur, de cessionnaire, de tuteur ou de curateur, sauf ordonnance contraire du tribunal.

Cautionnement non nécessaire

Trusts

174.—(1) A registered corporation is not bound to see to the execution of any trust, whether express, implied or constructive, other than a trust to which the corporation is a party, to which any of its deposits are subject.

Sufficient
discharge

(2) The receipt of the person in whose name any deposit stands in the books of the corporation to which subsection (1) applies is a sufficient discharge to the corporation for any payment made in respect thereof, and a direction to transfer, signed by the person in whose name any such deposit stands in the books of the corporation, is sufficient authority to the corporation for any transfer made in respect thereof, notwithstanding any trust to which the same may then be subject and whether the corporation has or has not had notice of the trust.

Application
of
money paid

(3) A corporation is not bound to see to the application of any money paid upon a receipt under subsection (2).

PART XI

ADMINISTRATION

Appointment
of Superin-
tendent

175.—(1) The Lieutenant Governor in Council shall appoint an officer of the Ministry to be the Superintendent of Deposit Institutions who shall carry out the duties and exercise the powers of the Superintendent under this Act.

Appointment
of
Director

(2) The Superintendent may appoint an officer of the Ministry to be the Director to carry out the duties and exercise the powers of the Director under this Act.

Appeal
panels

176.—(1) When an appeal is requested under this Act, the Minister shall appoint a panel to hear the appeal.

Composition

(2) An appeal panel shall consist of two persons who are not public servants and the Superintendent.

Secretary

(3) The Superintendent shall act as secretary of every appeal panel.

Chairman

(4) In appointing an appeal panel, the Minister shall name one of the persons who is not a public servant to be the chairman of the panel.

Idem

(5) No individual shall be disqualified from acting as a member of an appeal panel solely on the grounds that he or she is a depositor in the corporation which is the subject of the proceedings before the panel.

174 (1) La compagnie inscrite n'est pas tenue de voir à l'exécution d'une fiducie explicite, implicite ou imputée à laquelle ses dépôts sont assujettis, à moins d'être elle-même partie à la fiducie. Fiducies

(2) Le récépissé délivré par la personne dont le nom figure vis-à-vis d'un dépôt aux dossiers de la compagnie visé au paragraphe (1) constitue à l'égard de la compagnie une quittance suffisante de tout paiement effectué relativement à ce dépôt. L'ordre d'effectuer un transfert, signé de la personne précitée, constitue pour la compagnie une autorisation suffisante à cette fin, sans égard à la fiducie à laquelle le dépôt peut alors être assujetti, que l'existence de la fiducie ait été portée ou non à la connaissance de la compagnie. Quittance suffisante

(3) La compagnie n'est pas tenue de voir à l'imputation des sommes d'argent à l'origine du récépissé délivré aux termes du paragraphe (2). Imputation des sommes versées

PARTIE XI

APPLICATION DE LA LOI

175 (1) Le lieutenant-gouverneur en conseil nomme un fonctionnaire du ministère au poste de surintendant des institutions de dépôt, qui exerce les attributions du surintendant aux termes de la présente loi. Nomination du surintendant

(2) Le surintendant peut nommer un fonctionnaire du ministère au poste de directeur pour exercer les attributions du directeur aux termes de la présente loi. Nomination du directeur

176 (1) Lorsqu'il est interjeté appel aux termes de la présente loi, le ministre nomme les membres d'un comité chargé d'entendre l'appel. Comités d'appel

(2) Le comité d'appel se compose de deux personnes qui ne sont pas fonctionnaires, ainsi que du surintendant. Composition

(3) Le surintendant remplit les fonctions de secrétaire des comités d'appel. Secrétaire

(4) Lorsqu'il constitue un comité d'appel, le ministre désigne au poste de président l'une des personnes qui n'est pas fonctionnaire. Président

(5) Une personne n'est pas inhabile à devenir membre d'un comité d'appel pour le seul motif qu'elle est dépositante auprès de la compagnie qui fait l'objet de l'instance portée devant ce comité. Idem

Remuneration (6) The members of an appeal panel, other than the Superintendent, shall be paid such remuneration and expenses as the Lieutenant Governor in Council from time to time may determine.

Application of R.S.O. 1980, c. 274 (7) Section 8 of the *Ministry of Consumer and Commercial Relations Act* applies to members of an appeal panel.

No grants or gratuities to Ministry officials

177.—(1) No officer or employee of the Ministry performing duties or exercising powers under this Act shall accept or receive, directly or indirectly, any grant or gratuity from a corporation or any affiliate of a corporation or from any director, officer, employee or agent of a corporation or affiliate of a corporation and no corporation, director, officer, employee or agent of a corporation or any affiliate of a corporation shall make or give, directly or indirectly, any such grant or gratuity.

Interest as shareholder

(2) No officer or employee of the Ministry performing duties or exercising powers under this Act shall hold any shares of any corporation.

Capacity outside Ontario

178. The Superintendent and Director may, for the purposes of the administration and enforcement of this Act and the regulations, act outside Ontario as if they were acting inside Ontario.

Records

179.—(1) Records required by this Act to be prepared and maintained by the Superintendent or Director may be in bound or loose-leaf form or in photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in an accurate and intelligible form within a reasonable time.

Admission as evidence

(2) When records maintained by the Superintendent or Director are prepared and maintained other than in written form,

- (a) the Superintendent or Director, as the case may be, shall furnish any copy required to be furnished in intelligible written form; and
- (b) a report reproduced from those records, if it is certified by the Superintendent or Director, is, without proof of the office or signature thereof, admissible in evidence to the same extent as the original written records would have been.

(6) Les membres d'un comité d'appel, à l'exception du surintendant, reçoivent la rémunération et les indemnités que peut fixer le lieutenant-gouverneur en conseil.

Rémunération

(7) L'article 8 de la *Loi sur le ministère de la Consommation et du Commerce* s'applique aux membres du comité d'appel.

Application
du chap. 274
des L.R.O.
de 1980

177 (1) Aucun employé du ministère qui exerce des attributions aux termes de la présente loi ne peut accepter ni recevoir directement ou indirectement, d'une compagnie, d'un membre du même groupe, de l'administrateur, du dirigeant, de l'employé ou du mandataire d'une compagnie ou du membre du même groupe, quelque don ou gratification. De même, aucune compagnie ni aucun administrateur, dirigeant, employé, ou mandataire de la compagnie ou du membre du même groupe ne peut donner, directement ou indirectement, un don ou une gratification pareils.

Dons et grati-
fications pro-
hibés

(2) Ne peut être actionnaire d'une compagnie l'employé du ministère qui exerce des attributions aux termes de la présente loi.

Intérêt en
tant qu'ac-
tionnaire

178 Pour l'application et l'exécution de la présente loi et des règlements, le surintendant et le directeur peuvent exercer leur compétence en dehors de l'Ontario comme s'ils agissaient à l'intérieur de cette province.

Compétence
en dehors de
l'Ontario

179 (1) Les dossiers dont la présente loi requiert la tenue par le surintendant ou le directeur peuvent être conservés, soit sous forme de livres reliés ou à feuilles mobiles, soit sous forme de pellicules photographiques, ou peuvent être enregistrés à l'aide d'un procédé mécanique ou électronique de traitement des données ou d'un autre système de mise en mémoire de l'information, capable de reproduire dans un délai normal sous une forme compréhensible et précise les renseignements exigés.

Dossiers

(2) Si les dossiers tenus par le surintendant ou le directeur ne sont pas conservés par écrit :

Admissibilité
en preuve

- a) le surintendant ou le directeur, selon le cas, fournit sous une forme écrite compréhensible les copies exigées;
- b) le rapport dressé d'après ces dossiers et certifié par le surintendant ou le directeur est admissible en preuve dans la même mesure que les dossiers écrits originaux l'auraient été, sans qu'il soit nécessaire d'établir la qualité du signataire ou l'authenticité de sa signature.

Idem

(3) Neither the Superintendent nor the Director shall be required to produce any document where a copy of the document is furnished in compliance with clause (2) (a).

Power to
require
evidence

180.—(1) In pursuance of his or her duties under this Act, the Superintendent or Director may require to be made or may take and receive affidavits or depositions and may examine witnesses upon oath.

Employment
of
stenographer

(2) The evidence and proceedings in any matter before the Superintendent or Director may be reported by a stenographer who has taken an oath before the Superintendent or Director faithfully to report the same.

Examina-
tions,
audits and
inspections,
general

181.—(1) It is a condition of the registration of a corporation that it facilitate examinations, audits and inspections under this Act.

Material to
be furnished

(2) For the purpose of an examination, audit or inspection under this Act, the registered corporation and its subsidiaries shall prepare and submit to the person conducting the examination, audit or inspection such statements or returns with respect to its business, finances or other affairs, in addition to the statements or returns mentioned in this Act, as the Superintendent or Director may require, and the officers, agents and servants of the corporation and its subsidiaries shall cause their books to be open for inspection and shall otherwise facilitate such examination so far as it is in their power.

Production
of books

(3) In order to facilitate an examination, audit or inspection of the books and records of a registered corporation, the corporation and its subsidiaries may be required by the Superintendent or the Director to produce the books and records at the principal place of business of the corporation in Ontario, or at such other convenient place as the Superintendent or Director may direct.

Expense of
further
inspection

(4) On the direction of the Superintendent or Director, where an examination, audit or inspection of a corporation or a subsidiary of a corporation is made at an office situate outside Ontario, the corporation shall pay the costs and expenses in connection with such examination, audit or inspection.

Annual
inspection of
registered
corporations

182.—(1) Once each year or during such other period as the Superintendent may consider appropriate for a particular corporation, the Superintendent shall examine or cause a person acting under his or her direction to examine the statements of the condition and affairs of each registered corporation and the Superintendent or person shall make such inquiries as are necessary to ascertain the corporation's condition and ability to meet its obligations as and when they

(3) Le surintendant et le directeur ne sont pas tenus de produire le document dont une copie est fournie conformément à l'alinéa (2) a). Idem

180 (1) Dans l'exercice de leurs fonctions aux termes de la présente loi, le surintendant ou le directeur peuvent exiger et recevoir des affidavits, entendre et recevoir des dépositions et interroger des témoins sous serment. Pouvoir d'exiger une preuve

(2) Les témoignages et comptes rendus relatifs aux affaires instruites devant le surintendant ou le directeur peuvent être transcrits par le sténographe qui a fait serment devant ceux-ci de les transcrire fidèlement. Services de sténographes

181 (1) Comme condition de son inscription, la compagnie facilite l'examen, la vérification et l'inspection exigés aux termes de la présente loi. Examens, vérifications et inspections

(2) Aux fins de l'examen, de la vérification ou de l'inspection exigés aux termes de la présente loi, la compagnie inscrite et ses filiales dressent et présentent à la personne chargée de ces opérations des relevés et rapports relatifs aux activités commerciales, aux finances ou autres affaires de celle-ci, en plus de ceux mentionnés à la présente loi, selon ce qu'exigent le surintendant ou le directeur. Les dirigeants, mandataires et préposés de la compagnie et de ses filiales permettent l'inspection des livres comptables et facilitent l'examen dans la mesure de leurs moyens. Documents à produire

(3) Dans le but de faciliter l'examen, la vérification ou l'inspection des livres comptables et des dossiers de la compagnie inscrite et de ses filiales, le surintendant ou le directeur peuvent exiger la production de ces documents à l'établissement principal de la compagnie en Ontario ou à un autre endroit convenable fixé par ceux-ci. Production des livres comptables

(4) L'examen, la vérification ou l'inspection tenus à un bureau situé hors de l'Ontario s'effectuent aux frais de la compagnie ou de sa filiale si le surintendant ou le directeur l'ordonnent. Frais de l'inspection supplémentaire

182 (1) Une fois l'an ou à l'autre intervalle que le surintendant juge approprié relativement à une compagnie donnée, le surintendant effectue l'examen des états relatifs à la situation et aux affaires de chacune des compagnies inscrites, ou le fait effectuer par son délégué. L'un d'eux mène alors l'enquête nécessaire afin de vérifier la situation de la compagnie et sa capacité de faire honneur à ses obligations au fur et à mesure de leur échéance. Il examine aussi les normes et pro- Inspection annuelle auprès des compagnies inscrites

become due, whether the corporation is following sound business and financial practices, the procedures and standards of its management and whether or not the corporation has complied with this Act and the regulations and any requirement, order, term, condition or restriction of registration or inquiry made thereunder.

Idem

(2) In conducting the examination required by subsection (1), the Superintendent or other person shall attend at the principal place of business of the corporation and, if he or she considers it necessary, the Superintendent or person acting may visit any branch or office of the corporation.

Reliance on inspection by another government

(3) If the Superintendent is satisfied that an examination of a registered extra-provincial corporation conducted by the Government of Canada or of any province or territory of Canada complies with the standards required by the Superintendent for the examination of a corporation under subsection (1), the Superintendent may accept such examination, in whole or in part, as if it were an examination by the Superintendent under subsection (1).

Examination by Director

183. The Director, or any person designated by the Director, may at any time within business hours examine any books of or in the possession of a registered corporation or any of its subsidiaries relating to its business, wherever situate, and vouchers, securities and documents of a registered corporation.

Special examination

184.—(1) The Minister, on the Minister's own motion or upon an application by any interested party being made in writing, may appoint any person to make a special examination and audit of a registered corporation's books, accounts and securities, and to inquire generally into the conduct of its business.

Evidence upon which inquiry to be ordered

(2) An application under subsection (1) shall be supported by such evidence as the Minister may require for the purpose of showing that there is good reason for requiring the investigation to be made and that it is not prompted by malicious motives.

Security for costs

(3) The Minister may require an applicant under subsection (1) to give security for the payment of the costs of the inquiry to be given before appointing the special examiner.

Powers of examiner

(4) A special examiner may summon witnesses and take evidence under oath, and generally, for the purposes of such examination, audit and inquiry, has the powers of a commissioner under Part II of the *Public Inquiries Act*, which Part applies as if the examination, audit or inquiry were an inquiry under that Act.

cédés suivis par la direction et s'assure que la compagnie a suivi de saines pratiques commerciales et financières et a observé la présente loi et les règlements ainsi que les exigences, ordonnances, conditions et restrictions imposées, en vertu de ceux-ci, à l'inscription ou à la suite d'une enquête.

(2) Lors de l'examen visé au paragraphe (1), le surintendant ou son délégué se rend à l'établissement principal de la compagnie. Il peut également, s'il le juge à propos, se présenter à toute succursale ou bureau de la compagnie. Idem

(3) Si le surintendant est convaincu que l'examen effectué par le gouvernement du Canada, d'une province ou d'un territoire du Canada auprès d'une compagnie extraprovinciale inscrite est conforme aux normes qu'il observerait relativement à l'examen effectué aux termes du paragraphe (1), il peut l'adopter, en totalité ou en partie, comme s'il l'avait effectué lui-même aux termes du paragraphe (1). Inspection effectuée par un autre gouvernement

183 Le directeur ou son délégué peut, durant les heures de bureau, faire l'examen des livres comptables de la compagnie inscrite ou de sa filiale qui sont reliés à ses activités commerciales où qu'elles s'exercent, et des livres comptables qui se trouvent en la possession de celles-ci, ainsi que de ses pièces comptables, valeurs mobilières et documents. Examen par le directeur

184 (1) Le ministre peut, de sa propre initiative ou sur demande écrite d'un intéressé, nommer une personne pour procéder à la vérification et à l'examen particuliers des livres comptables de la compagnie inscrite ainsi que de ses comptes et valeurs mobilières et pour faire enquête d'une manière générale sur la conduite de ses affaires. Examen particulier

(2) La demande présentée en vertu du paragraphe (1) se fonde sur les éléments de preuve que peut exiger le ministre afin d'établir la nécessité de tenir l'enquête et de s'assurer que la demande ne s'inspire pas de motifs malveillants. Éléments de preuve à l'appui de l'enquête

(3) Avant de désigner un enquêteur, le ministre peut exiger que l'auteur d'une demande présentée en vertu du paragraphe (1) fournisse un cautionnement pour les frais de l'enquête. Cautionnement pour les frais

(4) L'enquêteur peut assigner des témoins à comparaître, recueillir des témoignages sous serment, et, de façon générale, pour les fins de l'examen, de la vérification et de l'enquête, exerce les pouvoirs d'une commission aux termes de la partie II de la *Loi sur les enquêtes publiques*. Cette partie s'applique comme s'il s'agissait d'une enquête tenue en vertu de cette loi. Attributions de l'enquêteur

Report to
Minister

(5) Upon the conclusion of the examination, audit and inquiry, the special examiner shall make a report in writing to the Minister.

Payment of
costs

(6) The Minister may, on the conclusion of an examination under this section, order the registered corporation or the party requesting the examination under subsection (1) to pay costs of such examination.

Inquiries
by
Superin-
tendent

185.—(1) The Superintendent or Director may address any inquiries to a registered corporation or to the president, secretary or any other officer thereof and, in the case of an extra-provincial corporation, also to its agent under section 32, for the purpose of ascertaining the corporation's condition and ability to meet its obligations or as to the conduct of its business or as to complaints made by depositors, borrowers or by persons for whom the registered corporation acts in a fiduciary capacity and it is the duty of a registered corporation or officer so addressed to reply promptly in writing to any such inquiry.

Notice to
directors

(2) The Superintendent or Director may require a registered corporation to forward a copy of any letter addressed to the registered corporation by the Superintendent or Director and any answer thereto to each director of the corporation and, upon such requirement being made, the secretary of the corporation shall include a copy of such letter and the answer thereto in the minutes of the meeting of the directors next following the requirement being made by the Superintendent or Director.

Extension
of time

186. Where under this Act a registered corporation is required to provide or file with the Superintendent any return or document or other information, the Superintendent, in his or her absolute discretion and upon payment by the corporation of the prescribed fee, may, before or after the last day for making the submission, extend the time therefor for such period not exceeding sixty days as he or she considers appropriate.

Notice as
proof

187.—(1) A notice published in *The Ontario Gazette* over the name of the Superintendent is, without further proof, *prima facie* proof of the facts set forth in the notice.

Certificate as
to
registration

(2) A certificate of the Superintendent that on a stated day a body corporate mentioned therein was or was not registered or was registered subject to terms, conditions or restrictions, or that the registration of a corporation was revoked on a stated day, is *prima facie* proof of the facts stated in the certificate.

Certified
copies

(3) Copies of, or extracts from, any book, record, instrument or document in the office of the Superintendent or of or

(5) Au terme de l'examen, de la vérification et de l'enquête, l'enquêteur présente au ministre son rapport écrit.

Rapport au ministre

(6) Le ministre peut, une fois terminé l'examen mené en vertu du présent article, enjoindre à la compagnie inscrite ou à la personne qui en a fait la demande aux termes du paragraphe (1) d'en acquitter les frais.

Acquittement des frais

185 (1) Le surintendant ou le directeur peuvent adresser une demande de renseignements à la compagnie inscrite ou à son président, son secrétaire ou un autre de ses dirigeants et, dans le cas de la compagnie extraprovinciale, également à son mandataire visé à l'article 32. Cette demande peut se faire afin de vérifier la situation de la compagnie, sa capacité de faire honneur à ses obligations ou la conduite de ses affaires, ou peut porter sur les plaintes formulées par les déposants, les emprunteurs et les personnes qu'elle représente en qualité de fiduciaire. Il incombe à la compagnie inscrite ou au dirigeant visé de répondre promptement par écrit à la demande.

Demande de renseignements par le surintendant

(2) Le surintendant ou le directeur peuvent exiger que la compagnie inscrite fasse parvenir à chacun de ses administrateurs une copie de chacune des lettres qu'ils lui ont adressées ainsi que de la réponse donnée, le cas échéant. Dans ce cas, le secrétaire de la compagnie annexe ces documents au procès-verbal de la réunion du conseil d'administration qui suit immédiatement la réception de la demande du surintendant ou du directeur.

Avis aux administrateurs

186 Le surintendant peut, à son entière discrétion et moyennant le paiement par la compagnie inscrite des droits prescrits, avant ou après la date limite, proroger pour une période qu'il juge appropriée et qui ne dépasse pas soixante jours le délai fixé pour le dépôt par la compagnie inscrite des rapports, documents ou autres renseignements exigés aux termes de la présente loi.

Prorogation du délai

187 (1) L'avis publié dans la *Gazette de l'Ontario* et sur lequel figure le nom du surintendant fait foi *prima facie* de son contenu sans qu'une autre preuve soit nécessaire.

L'avis fait foi

(2) Fait foi *prima facie* de son contenu, le certificat du surintendant précisant qu'à une date donnée, la personne morale qui y est mentionnée était inscrite ou non, que son inscription était subordonnée à certaines conditions et restrictions ou a été révoquée.

Certificat d'inscription

(3) Les copies ou extraits certifiés conformes par le surintendant et tirés de livres comptables, de dossiers, d'actes ou de documents conservés à son bureau de même que d'actes ou de documents délivrés aux termes de la présente loi sont tenus pour authentiques, font preuve *prima facie* de l'original et produisent les mêmes effets juridiques.

Copies certifiées conformes

from any instrument or document issued under this Act, if certified by the Superintendent to be true copies or extracts, shall be held as authentic and are *prima facie* proof of and have the same legal effect as the original.

Agreements
with other
Governments

188. The Minister, with the approval of the Lieutenant Governor in Council, may enter into agreements with the Government of Canada or of any province or territory in Canada, or the appropriate authority thereof, related to the administration and enforcement of this Act or of comparable legislation of any such other jurisdiction and, without restricting the generality of the foregoing, any such agreement may provide for the provision and exchange of information.

Capacity of
Superin-
tendent

189.—(1) The Superintendent may do all things necessary or incidental to the administration and enforcement of this Act and the regulations and, in particular, but without limiting the generality of the foregoing, may,

- (a) receive written undertakings from corporations and enter into written agreements with corporations; and
- (b) enter into written agreements with third parties related to the administration of this Act and the regulations and give indemnities to third parties related to such activities as are authorized under such agreements.

Annual
report

(2) The Superintendent shall, not later than the 30th day of June in each year, submit to the Minister a report on the activities of the Superintendent's office for the twelve-month period ending on the preceding 31st day of March and the Minister shall then lay the report before the Assembly if it is in session or, if not, at its next session.

PART XII

ENFORCEMENT AND CIVIL REMEDIES

Director's
orders

190.—(1) Where, in the opinion of the Director, a registered corporation or other person is committing any act or pursuing any course of conduct that,

- (a) does not comply with this Act or the regulations;
- (b) might reasonably be expected, if continued, to result in a state of affairs that would not be in compliance with this Act or the regulations;
- (c) does not comply with a voluntary compliance program under section 196;

188 Le ministre peut, avec l'approbation du lieutenant-gouverneur en conseil, conclure des accords avec le gouvernement du Canada, d'une province ou d'un territoire du Canada ou avec l'organisme qui les représente, concernant l'application et l'exécution de la présente loi ou de la loi correspondante de l'autre compétence visée. Ces accords peuvent prévoir notamment que des renseignements seront fournis et échangés.

Accords conclus avec d'autres gouvernements

189 (1) Le surintendant peut prendre toute mesure essentielle ou accessoire relative à l'application et à l'exécution de la présente loi et des règlements, et notamment :

Pouvoirs du surintendant

- a) accepter des engagements écrits souscrits de la part de compagnies et conclure avec elles des conventions écrites;
- b) conclure avec des tiers des conventions écrites reliées à l'application de la présente loi et des règlements, et leur accorder des garanties d'indemnité relatives aux activités permises aux termes de ces conventions.

(2) Le surintendant présente au ministre, au plus tard le 30 juin de chaque année, un rapport concernant les activités du bureau du surintendant pour la période de douze mois se terminant le 31 mars précédent. Le ministre présente alors le rapport à l'Assemblée si celle-ci siège, sinon, au cours de la session suivante.

Rapport annuel

PARTIE XII

EXÉCUTION ET RECOURS DE NATURE CIVILE

190 (1) Lorsque, de l'avis du directeur, une compagnie inscrite ou une autre personne commet un acte ou suit une ligne de conduite :

Décision

- a) qui ne sont pas conformes à la présente loi ou aux règlements;
- b) dont la poursuite risque vraisemblablement de créer une situation qui ne soit pas conforme à la présente loi ou aux règlements;
- c) qui ne sont pas conformes à un programme d'adhésion volontaire visé à l'article 196;
- d) qui ne sont pas conformes à un engagement pris aux termes de la présente loi;

- (d) does not comply with any undertaking given under this Act;
- (e) constitutes a practice which might prejudice or adversely affect the interests of depositors or, if the corporation is a trust corporation, of persons for whom the corporation acts in a fiduciary capacity,

the Director may give notice to the registered corporation or other person of an intention to order the corporation or other person,

- (f) to cease doing any act or to cease pursuing any course of conduct identified by the Director; or
- (g) to perform such acts as in the opinion of the Director are necessary to remedy the situation.

Hearing

(2) The corporation or other person, by written notice served on the Director within fifteen days after the service of the notice on the corporation or other person under subsection (1), may require a hearing before the Director.

Temporary order

(3) Notwithstanding subsection (2), where in the opinion of the Director the interests of the depositors or the public may be prejudiced or adversely affected by any delay in the issuance of a permanent order, the Director may make a temporary order as described in clause (1) (f) or (g) which shall take effect immediately on its making and which shall become permanent on the fifteenth day after its making unless within that time a hearing before the Director is requested.

When order may be made

(4) Where no hearing is requested within the time set out in subsection (2) or (3), or where a hearing is held and the Director is of the opinion that an order described in clause (1) (f) or (g) should be made, the Director may make a permanent order under either of those clauses which shall take effect immediately on its making or at such later date as may be set out in the order.

Hearing

(5) A request for a hearing under subsection (3) shall be in writing and served on the Director.

Extension of order

(6) Where a hearing is requested under subsection (3), the Director may extend the temporary order until the hearing is concluded or any appeal from the hearing is concluded and the order is confirmed, varied or revoked.

Copy to directors

(7) Where an order is made under this section, a copy of the order shall be sent to each director of the affected corporation.

- e) qui risquent de léser les droits des déposants ou, dans le cas d'une compagnie de fiducie, des personnes qu'elle représente à titre de fiduciaire,

celui-ci peut envoyer à la compagnie inscrite ou à l'autre personne un avis de son intention de prendre une ordonnance lui enjoignant :

- f) de mettre fin aux actes ou à la ligne de conduite que le directeur précise;
- g) de prendre les mesures qui, de l'avis du directeur, s'imposent afin de remédier à la situation.

(2) La compagnie ou l'autre personne peut, au moyen d'un avis écrit signifié au directeur dans les quinze jours de la signification de l'avis visé au paragraphe (1), exiger la tenue d'une audience devant le directeur. Audience

(3) Malgré le paragraphe (2), dans le cas où, de l'avis du directeur, tout retard apporté à la prise de l'ordonnance permanente risque de porter atteinte aux droits des déposants ou du public, le directeur peut prendre une ordonnance provisoire en vertu des alinéas (1) f) ou g). L'ordonnance prend effet dès qu'elle est prise et devient permanente le quinzième jour suivant, sauf si une demande d'audience devant le directeur est présentée au cours de ce délai. Ordonnance provisoire

(4) Le directeur peut prendre une ordonnance permanente en vertu des alinéas (1) f) ou g), s'il n'est pas demandé d'audience dans le délai imparti au paragraphe (2) ou (3), ou si cette audience se tient et que le directeur est d'avis qu'il faut prendre cette ordonnance. L'ordonnance prend effet dès qu'elle est prise ou à la date ultérieure qui y est précisée. Moment de rendre la décision

(5) La demande d'audience faite en vertu du paragraphe (3) est présentée par écrit et signifiée au directeur. Audience

(6) Le directeur peut, lorsqu'une audience est demandée aux termes du paragraphe (3), prolonger les effets de l'ordonnance provisoire tant que l'audition n'est pas terminée ou qu'une décision pour confirmer, modifier ou révoquer l'ordonnance n'a pas été rendue en appel. Prolongation des effets de l'ordonnance

(7) Une copie de l'ordonnance prise aux termes du présent article est envoyée à chacun des administrateurs de la compagnie visée. Copies aux administrateurs

(8) Le directeur peut modifier ou révoquer l'ordonnance prise aux termes du présent article. Modification ou révocation de l'ordonnance

Modification or revocation of order (8) The Director may modify or revoke an order made under this section.

Appeals

191.—(1) A party to a hearing before the Director, within fifteen days after the receipt of the Director's decision, may appeal the decision to an appeal panel by serving a notice in writing of the appeal on the Superintendent who shall advise the Minister forthwith of the request.

Idem

(2) An appeal shall be based on such evidence as may be presented to the appeal panel, and the panel, upon hearing an appeal, may confirm, vary or revoke the order that is the subject of the appeal.

Superintendent approvals

192.—(1) Where under this Act there is provision for an approval, designation or consent of the Superintendent, he or she may give or refuse the approval, designation or consent and the approval, designation or consent may be subject to such terms and conditions as the Superintendent may impose.

Final decision

(2) A decision by the Superintendent under this Act shall be in writing and is not subject to appeal to an appeal panel.

Hearing

(3) Before refusing an approval, designation or consent or before granting an approval, designation or consent subject to terms and conditions, the Superintendent shall give the registered corporation notice of his or her intention and the registered corporation may require a hearing before the Superintendent.

Power of Superintendent

(4) The Superintendent, having given the registered corporation an opportunity to be heard, may confirm, revoke or vary any approval, designation, consent or refusal.

Restriction on borrowing

(5) The Superintendent, having given a registered corporation an opportunity to be heard, may reduce to any amount the amount that it may receive by way of deposit or borrow in the case of a trust corporation or that it may borrow, in the case of a loan corporation and the amount may be an amount that is less than ten times its capital base.

Director may be party

193. The Director is entitled to attend and to be represented by counsel at any hearing before an appeal panel.

Transcript

194. Oral evidence taken before the Director, the Superintendent or an appeal panel may be recorded and, if recorded, copies of a transcript thereof shall be furnished upon request upon the same terms and for the same fees as in the Supreme Court.

191 (1) Une partie à l'audience tenue devant le directeur peut, dans les quinze jours de la réception de la décision du directeur, en interjeter appel devant un comité d'appel en signifiant au surintendant un avis écrit d'appel. Celui-ci en notifie le ministre sans délai. Appels

(2) L'appel est fondé sur la preuve présentée au comité d'appel. Ce dernier peut ensuite confirmer, modifier ou révoquer l'ordonnance qui en fait l'objet. Idem

192 (1) Dans les cas prévus par la présente loi, le surintendant peut refuser ou accorder son consentement, son approbation ou une désignation, qui peuvent alors être assortis des conditions qu'il impose. Approbation, etc., par le surintendant

(2) La décision rendue par le surintendant aux termes de la présente loi est présentée par écrit et ne peut faire l'objet d'un appel devant un comité d'appel. Décision définitive

(3) Avant de refuser ou d'accorder son consentement, son approbation ou une désignation, et avant de les accorder assortis de conditions, le surintendant avise la compagnie inscrite de son intention. Elle peut exiger la tenue d'une audience devant le surintendant. Audience

(4) Après avoir donné à la compagnie inscrite l'occasion de se faire entendre, le surintendant peut confirmer, révoquer ou modifier l'approbation, le consentement, la désignation ou le refus. Pouvoirs du surintendant

(5) Après avoir donné à la compagnie inscrite l'occasion de se faire entendre, le surintendant peut réduire à un montant quelconque, même à un montant inférieur à dix fois l'apport en capital de la compagnie, le montant qu'elle peut recevoir à titre de dépôts ou qu'elle peut emprunter, dans le cas d'une compagnie de fiducie inscrite, ou le montant qu'elle peut emprunter, dans le cas d'une compagnie de prêt inscrite. Limitation d'emprunts

193 Le directeur a le droit d'assister en personne et d'être représenté par un avocat lors de l'audience devant un comité d'appel. Le directeur peut être partie

194 Les témoignages oraux reçus par le directeur, le surintendant ou un comité d'appel peuvent être enregistrés. Dans ce cas, une copie de leur transcription est remise sur demande, selon les mêmes modalités et moyennant le paiement des mêmes droits qu'à la Cour suprême. Transcription

Hearings *in camera*

195. A hearing before the Director, the Superintendent or an appeal panel, at the discretion of the Director, the Superintendent or the chairman of the panel, as the case may be, may be heard *in camera* or in public.

Voluntary compliance program

196.—(1) Where, in the opinion of the Superintendent, a registered corporation or other person is committing any act or pursuing any course of conduct that,

- (a) does not comply with this Act or the regulations;
- (b) might reasonably be expected, if continued, to result in a state of affairs that would not be in compliance with this Act or the regulations;
- (c) does not comply with any undertaking given under this Act; or
- (d) constitutes a practice that might prejudice or adversely affect the interests of depositors or persons for whom the registered corporation, if a trust corporation, acts in a fiduciary capacity,

the registered corporation or other person may enter into a program of voluntary compliance related to any act or course of conduct described in clause (a), (b), (c) or (d).

Idem

(2) A voluntary compliance program under this section shall be in writing and shall bind the registered corporation or other person from the time it is approved by the Superintendent.

Powers of Director not affected

(3) Where a voluntary compliance program has been entered into, the Director shall not be prevented from making orders against the registered corporation or other person,

- (a) on matters not covered by the program;
- (b) where the program is not complied with, on matters covered in the voluntary compliance program;
- (c) if there has been a deterioration in the condition of the registered corporation; or
- (d) on matters covered in the program where all the facts related to the matter covered by the program were not known by the Superintendent at the time the program was entered into.

Modification of program

(4) The Superintendent on the request of a registered corporation may approve the alteration of a voluntary compliance program entered into under this section.

195 L'audience tenue devant le directeur, le surintendant ou un comité d'appel peut avoir lieu à huis clos ou en public, à la discrétion du directeur, du surintendant ou du président du comité d'appel, selon le cas.

Audiences à huis clos

196 (1) Lorsque, de l'avis du surintendant, une compagnie inscrite ou une autre personne commet un acte ou suit une ligne de conduite :

Programme d'adhésion volontaire

- a) qui ne sont pas conformes à la présente loi ou aux règlements;
- b) dont la poursuite risque vraisemblablement de créer une situation qui ne soit pas conforme à la présente loi ou aux règlements;
- c) qui ne sont pas conformes à un engagement pris aux termes de la présente loi;
- d) qui risquent de léser les droits des déposants ou, dans le cas d'une compagnie de fiducie, des personnes qu'elle représente à titre de fiduciaire,

la compagnie inscrite ou l'autre personne peut souscrire à un programme d'adhésion volontaire concernant un acte ou une ligne de conduite visés aux alinéas a), b), c) ou d).

(2) Le programme d'adhésion volontaire visé au présent article est dressé par écrit et lie la compagnie inscrite ou l'autre personne dès son approbation par le surintendant.

Idem

(3) La souscription de la compagnie inscrite ou de l'autre personne au programme d'adhésion volontaire n'empêche pas le directeur de prendre à l'encontre de ces personnes une ordonnance :

Aucune incidence sur les pouvoirs du directeur

- a) dont l'objet ne figure pas au programme;
- b) dont l'objet figure au programme lorsque ce dernier n'a pas été observé;
- c) lorsqu'il y a eu détérioration de la situation de la compagnie inscrite;
- d) dont l'objet figure au programme si tous les faits relatifs à l'objet du programme n'étaient pas connus du surintendant au moment de la souscription de la compagnie au programme.

(4) À la demande de la compagnie inscrite, le surintendant peut donner son approbation à la modification apportée au programme d'adhésion volontaire auquel a souscrit la compagnie aux termes du présent article.

Modification au programme

Cancellation
of
registration

197.—(1) Where,

- (a) a registered corporation or other person has not complied with an order of the Director or of an appeal panel;
- (b) a registered corporation or other person has breached an order of the court made under section 208;
- (c) grounds exist for the possession and control of a registered corporation by the Superintendent; or
- (d) a registered corporation's authority to carry on business has been cancelled or suspended or terms or conditions have been imposed on its authority to carry on business under a law of Canada or of any province or territory of Canada,

the Director may revoke the registration of the corporation or impose terms, conditions or restrictions on the registration of the corporation.

Notice of
intention

(2) Where the Director proposes to act under subsection (1), the Director shall serve a notice of the intention to act on the corporation.

Hearing

(3) Subsections 190 (2) and (3) apply where a notice is served under subsection (2).

Corporation
to cease
business
except
for winding
up
purposes

(4) After the revocation of a registration under this section, the corporation shall, unless again registered, cease to transact or undertake business in Ontario, except so far as it is necessary for the winding up of its business in Ontario, but any liability incurred by it may be enforced against it as if such revocation had not taken place.

Notice on
change of
status

198.—(1) On the revocation of the registration of any corporation, or the modification of any of the terms, conditions or restrictions on its registration, the Superintendent shall cause notice in writing thereof to be delivered to it.

Idem

(2) Where the corporation has had its registration revoked, the notice shall be published by the Superintendent in *The Ontario Gazette*.

Orders
imposing
limitations
and
conditions
or for taking
possession
and control

199.—(1) Notwithstanding any other provision of this Act, the Lieutenant Governor in Council, without holding a hearing, may order,

- (a) that a corporation's registration shall be subject to such terms, conditions and restrictions as are set out in the order; or

197 (1) Le directeur peut radier l'inscription de la compagnie ou assortir son inscription de conditions et de restrictions, si :

Radiation de l'inscription

- a) la compagnie ou une autre personne ne s'est pas conformée à l'ordonnance du directeur ou du comité d'appel;
- b) la compagnie ou une autre personne ne s'est pas conformée à l'ordonnance du tribunal rendue en vertu de l'article 208;
- c) des motifs justifient une prise de possession et de contrôle par le surintendant;
- d) l'autorisation d'exercer ses activités commerciales a été résiliée, interrompue ou assortie de conditions en vertu d'une loi du Canada, d'une province ou d'un territoire du Canada.

(2) Le directeur signifie à la compagnie avis de son intention de prendre les mesures visées au paragraphe (1).

Avis d'intention de prendre des mesures

(3) Les paragraphes 190 (2) et (3) s'appliquent dans le cas de signification de l'avis visé au paragraphe (2).

Audience

(4) Sauf dans la mesure nécessaire à la liquidation de son entreprise en Ontario, la compagnie dont l'inscription est radiée cesse ses opérations et ses activités commerciales dans cette province, à moins d'être réinscrite. Elle demeure toutefois responsable de ses obligations, dont l'exécution peut être exercée contre elle comme si la radiation n'avait pas eu lieu.

Cessation des activités commerciales, sauf le cas de liquidation

198 (1) Le surintendant fait remettre à la compagnie inscrite dont l'inscription a été radiée ou dont les conditions et restrictions d'inscription ont été modifiées un avis écrit à cet effet.

Avis de modification de statut

(2) Le surintendant publie dans la *Gazette de l'Ontario* l'avis de radiation de l'inscription de la compagnie.

Idem

199 (1) Malgré toute disposition contraire de la présente loi, le lieutenant-gouverneur en conseil peut par décret, sans tenir d'audience :

Imposition de limitations et conditions, prise de possession et contrôle

- a) assortir l'inscription de la compagnie des conditions et restrictions qui y sont énoncées;

- (b) that the Superintendent take possession and control of the assets of a provincial corporation,

where, in the opinion of the Lieutenant Governor in Council, one or more of the following has occurred:

1. There has been, on or after the 21st day of December, 1982, a transfer or issue of shares to which subsection 63 (1) or (2) applies and consent has not been obtained under section 63 or a predecessor thereof.
2. The corporation has defaulted on payment of any of its liabilities.
3. The corporation is not complying with this Act or the regulations.
4. The corporation's assets are not satisfactorily accounted for.
5. The corporation's assets are not sufficient, having regard to all the circumstances, to give adequate protection to the corporation's depositors.
6. There exists any practice of or state of affairs within the corporation that is or may be prejudicial to the public interest or to the interests of the corporation's depositors, creditors or shareholders.

Delivery of
order

(2) Where the Lieutenant Governor in Council makes an order under subsection (1), the Superintendent shall deliver a copy of the order to an officer of the registered corporation.

Order final
and binding

(3) An order of the Lieutenant Governor in Council under subsection (1) shall take effect immediately and the order is final and binding and no such order or any order made under subsection (5) confirming or varying such order shall be stayed, varied or set aside by any court.

Appointment
of appraiser

(4) For the purposes of this section, the Lieutenant Governor in Council may appoint such persons as the Lieutenant Governor in Council considers necessary to value and appraise the assets and liabilities of the corporation and report upon its condition and its ability, or otherwise, to meet its liabilities.

L.G. in C.
may confirm,
vary or
rescind
orders

(5) Upon the petition of any party or person interested, filed with the Clerk of the Executive Council within sixty days after the date of any order made under subsection (1), the Lieutenant Governor in Council, by order, may confirm, vary or rescind the whole or any part of such order and an order under this subsection is final and binding.

- b) enjoindre au surintendant de prendre possession et d'assumer le contrôle des biens de la compagnie provinciale,

lorsqu'à son avis, l'une ou plusieurs des situations suivantes se sont produites :

1. Le 21 décembre 1982 ou après cette date, il y a eu transfert ou émission d'actions auxquels s'applique le paragraphe 63 (1) ou (2), sans l'obtention préalable du consentement visé à l'article 63 ou à une disposition que cet article remplace.
2. La compagnie a fait défaut d'acquitter tout ou partie de son passif.
3. La compagnie ne se conforme pas à la présente loi ou aux règlements.
4. Il n'est pas suffisamment rendu compte de l'actif de la compagnie.
5. L'actif de la compagnie, eu égard à toutes les circonstances, ne peut suffire à protéger ses déposants.
6. Une situation ou des pratiques qui ont cours au sein de la compagnie portent ou risquent de porter atteinte à l'intérêt du public ou à l'intérêt des déposants, créanciers ou actionnaires de la compagnie.

(2) Le surintendant remet copie du décret du lieutenant-gouverneur en conseil pris en vertu du paragraphe (1) à l'un des dirigeants de la compagnie inscrite.

Remise du décret

(3) Le décret du lieutenant-gouverneur en conseil pris en vertu du paragraphe (1) prend effet immédiatement, est définitif et a force exécutoire. Aucun tribunal ne peut suspendre, modifier ou annuler ce décret ni celui pris en vertu du paragraphe (5).

Le décret a force exécutoire

(4) Pour l'application du présent article, le lieutenant-gouverneur en conseil peut nommer le personnel qu'il juge nécessaire aux fins d'évaluer l'actif et le passif de la compagnie et de faire rapport sur sa situation de même que sur sa capacité d'acquitter ou non son passif.

Estimateurs

(5) Sur pétition déposée auprès du greffier du Conseil des ministres par une partie ou une personne intéressée dans les soixante jours du décret pris en vertu du paragraphe (1), le lieutenant-gouverneur en conseil peut, par décret, confirmer, modifier ou annuler celui-ci en totalité ou en partie. Le décret pris en vertu du présent paragraphe est définitif et a force exécutoire.

Le lieutenant-gouverneur en conseil peut confirmer, modifier ou annuler les décrets

Saving

(6) Nothing in this section affects the right of the Lieutenant Governor in Council to vary or rescind, at any time, an order made under subsection (1).

Power of
Superin-
tendent
upon taking
control

200.—(1) If so ordered by the Lieutenant Governor in Council under section 199, the Superintendent shall take possession and control of the assets of a provincial corporation and shall thereafter conduct its business and take such steps as in the Superintendent's opinion should be taken toward its rehabilitation or, where an order is made under paragraph 1 of subsection 199 (1), its continued operation, and for such purposes the Superintendent has all the powers of the board of directors of the corporation, and without limiting the generality of the foregoing, the Superintendent may,

- (a) exclude the directors, officers, servants and agents of the corporation from the property and business of the corporation; and
- (b) carry on, manage and conduct the operations of the corporation and in the name of the corporation preserve, maintain, realize, dispose of and add to the property of the corporation, receive the income of the corporation and exercise all the powers of the corporation.

Application
to court

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c. 95

(2) While the Superintendent has possession and control of the assets of a provincial corporation under this section, the Superintendent may apply to the court for an order for the winding up of the corporation under Part VI of the *Corporations Act*.

Appointment
of managers

(3) Where the Superintendent is in possession and control of the assets of a provincial corporation and is conducting its business, he or she may appoint one or more persons to manage and operate the business of the corporation, and,

- (a) each person so appointed is a representative of the Superintendent; and
- (b) the remuneration of any such person, other than an officer or employee of the Ministry, shall be fixed by the Superintendent.

Relinquishing
control

(4) Whenever the Lieutenant Governor in Council believes that a corporation whose assets are in the possession and control of the Superintendent meets the requirements of this Act and that it is otherwise proper for the corporation to resume possession and control of its assets and the conduct of its business, the Lieutenant Governor in Council may in writing direct the Superintendent to relinquish to the corporation the

(6) Le présent article n'a pas pour effet de limiter le droit du lieutenant-gouverneur en conseil de modifier ou d'annuler le décret pris aux termes du paragraphe (1). Exception

200 (1) Lorsque le lieutenant-gouverneur en conseil le décrète en vertu de l'article 199, le surintendant prend possession et assume le contrôle des biens de la compagnie provinciale. Il gère alors l'entreprise et prend les mesures qui, à son avis, s'imposent en vue du redressement de la situation de la compagnie ou, dans le cas d'un décret pris en vertu de la disposition 1 du paragraphe 199 (1), en vue de la poursuite de l'exploitation de la compagnie. À ces fins, le surintendant possède tous les pouvoirs du conseil d'administration de la compagnie et peut notamment :

Pouvoirs du
surintendant
qui assume le
contrôle

- a) exclure les dirigeants, administrateurs, préposés et mandataires de la compagnie de ses locaux et de ses affaires;
- b) gérer et mener les opérations de la compagnie et, au nom de cette dernière, conserver, maintenir, réaliser, accroître ses biens, en disposer, en percevoir les revenus et exercer tous les pouvoirs de la compagnie.

(2) Pendant que le surintendant a la possession et le contrôle de l'actif de la compagnie provinciale en vertu du présent article, il peut présenter au tribunal une requête en vue d'obtenir une ordonnance de liquidation de la compagnie en vertu de la partie VI de la *Loi sur les compagnies et associations*. Requête au
tribunal

(3) Si le surintendant a la possession et le contrôle de l'actif de la compagnie provinciale et gère l'entreprise de celle-ci, il peut nommer une ou plusieurs personnes aux fins de gérer et d'exploiter l'entreprise. Dans ce cas :

Nomination
de gestion-
naires

- a) chacune des personnes désignées est le délégué du surintendant;
- b) le surintendant fixe leur rémunération, sauf celle d'un employé du ministère.

(4) Si le lieutenant-gouverneur en conseil est d'avis que la compagnie dont la possession et le contrôle de l'actif sont présentement dévolus au surintendant satisfait aux exigences de la présente loi et que celle-ci est en mesure de gérer son entreprise et de reprendre la possession et le contrôle de son actif, il peut, par écrit, enjoindre à ce dernier de s'en dessaisir en faveur de la compagnie. Les pouvoirs du surintendant en vertu du présent article prennent alors fin à compter de la date précisée dans cette directive. Remise du
contrôle

possession and control of its assets, and from and after the date specified in such direction the powers of the Superintendent under this section cease.

Where
rehabilitation
efforts futile

(5) If the Lieutenant Governor in Council considers that further efforts to rehabilitate a corporation whose assets are in the possession and control of the Superintendent would be futile, the Lieutenant Governor in Council may in writing direct the Superintendent to relinquish to the corporation the possession and control of its assets, and from and after the date specified in such direction the powers of the Superintendent under this section cease.

Expenses of
proceedings

(6) The expenses of the Superintendent incurred in proceedings under this section or section 198 or 199 shall be paid,

- (a) by the registered corporation; or
- (b) where the corporation that is the subject of the proceeding,
 - (i) is a loan corporation and the corporation cannot pay the full cost of the proceedings, by all registered loan corporations, or
 - (ii) is a trust corporation and the trust corporation cannot pay the full cost of proceedings, by all registered trust corporations,

and, where clause (b) applies, the share of each registered corporation shall be in the same proportion as its total assets in its last preceding fiscal year bears to the total assets of all loan corporations or trust corporations, as the case may be, in the last preceding fiscal year of each.

Advisory
committee

(7) The registered corporations required by clause (6) (b) to bear the expenses of the Superintendent may appoint a committee of not more than six members to advise the Superintendent in respect of all matters pertinent to the rehabilitation of the corporation whose assets are in the possession and control of the Superintendent.

Application
to court

201.—(1) Notwithstanding any other provision of this Act, where the Superintendent has taken possession and control of a registered corporation under section 199, the Superintendent may apply to the High Court of Justice for an order,

- (a) authorizing some other person to conduct the business of the corporation on such terms and conditions as the court thinks fit;

(5) Si le lieutenant-gouverneur en conseil est d'avis que serait vaine toute nouvelle tentative de redressement de la situation de la compagnie dont la possession et le contrôle de l'actif sont présentement dévolus au surintendant, il peut, par écrit, enjoindre à ce dernier de s'en dessaisir en faveur de la compagnie. Les pouvoirs du surintendant en vertu du présent article prennent alors fin à compter de la date précisée dans cette directive.

Vaines tentatives de redressement

(6) Les frais engagés par le surintendant relativement aux mesures prises aux termes du présent article ou des articles 198 ou 199 sont payés :

Frais

- a) par la compagnie inscrite;
- b) si la compagnie qui fait l'objet des mesures :
 - (i) est une compagnie de prêt qui ne peut assumer seule la totalité des frais, par toutes les compagnies de prêt inscrites,
 - (ii) est une compagnie de fiducie qui ne peut assumer seule la totalité des frais, par toutes les compagnies de fiducie inscrites.

Dans le cas d'application de l'alinéa b), la quote-part de chaque compagnie inscrite est proportionnelle au total de son actif pour son dernier exercice, par rapport au total de l'actif de toutes les compagnies de prêt ou compagnies de fiducie, selon le cas, lors de l'exercice précédent de chacune d'elles.

(7) Les compagnies inscrites qui sont tenues, aux termes de l'alinéa (6) b), de supporter des frais engagés par le surintendant peuvent nommer un comité d'au plus six membres afin de conseiller celui-ci sur les questions reliées au redressement de la situation de la compagnie dont la possession et le contrôle de l'actif lui sont dévolus.

Comité consultatif

201 (1) Malgré toute disposition contraire de la présente loi, lorsque le surintendant a pris la possession et le contrôle de la compagnie inscrite en vertu de l'article 199, il peut demander à la Haute Cour, par voie de requête, de rendre une ordonnance ayant pour effet :

Requête au tribunal

- a) d'autoriser une autre personne à gérer l'entreprise de la compagnie aux conditions que le tribunal estime pertinentes;

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- (b) authorizing and directing the sale of the assets of the corporation in whole or in part notwithstanding any provision of the *Bulk Sales Act*;
- (c) appointing interim or permanent substitute trustees in respect of all or any part of the fiduciary obligations and duties of the corporation;
- (d) authorizing or directing such other action as the court thinks appropriate and in the best interests of the depositors, persons for whom the corporation acts in a fiduciary capacity, the creditors and the public; or
- (e) staying any civil proceedings against the corporation while the Superintendent is in possession and control of the corporation.

Substituted
fiduciary

(2) Where the High Court of Justice has made an order under clause (1) (c), the fiduciary duties vest in, bind and may be enforced against the substituted fiduciary as fully and effectually as if the substituted fiduciary was originally named as fiduciary.

Orders, etc.,
binding on
successors
and
assignees

202. Where an order or approval is made or given under this Act or a term, condition or restriction is imposed on its registration, it is binding on every successor or assignee of the corporation or other person to whom it is directed.

Over-valued
property

203.—(1) If in the opinion of the Director with respect to a registered corporation or its subsidiaries, it appears that,

- (a) the value placed upon the real estate owned by the corporation or any of its subsidiaries or any parcel thereof is too great;
- (b) the amount secured by mortgage upon any parcel of real estate, together with interest due and accrued thereon is greater than the lending value of the parcel, or that the parcel is not sufficient security for the loan and interest; or
- (c) the market value of any other investment is less than the amount shown in the books of the corporation or any of its subsidiaries,

the Director may require the corporation to secure an appraisal of such assets by one or more competent valuers or the Director may procure such appraisal at the expense of the corporation.

- b) d'autoriser et de surveiller la vente de la totalité ou d'une partie des biens de la compagnie, malgré les dispositions de la *Loi sur la vente en bloc*;
- c) de nommer des représentants suppléants, provisoires ou permanents, aux fins d'acquitter la totalité ou une partie des obligations fiduciaires de la compagnie;
- d) d'autoriser ou d'ordonner d'autres mesures que le tribunal juge pertinents et dans l'intérêt véritable des déposants, des personnes que la compagnie représente à titre de fiduciaire, de ses créanciers et du public;
- e) de suspendre toute poursuite civile engagée contre la compagnie pendant que le surintendant a la possession et le contrôle de l'actif.

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chap. 52

(2) Si la Haute Cour rend une ordonnance aux termes de l'alinéa (1) c), les obligations fiduciaires passent au représentant suppléant. Celles-ci sont susceptibles d'exécution contre lui dans la même mesure que s'il était le représentant original.

Représentant
suppléant

202 L'ordonnance rendue ou l'approbation accordée aux termes de la présente loi, ainsi que les conditions et restrictions dont est assortie son inscription, lient les successeurs et cessionnaires de la compagnie ou de l'autre personne à qui celles-ci s'adressent.

Ordonnances,
etc., lient les
successeurs et
cessionnaires

203 (1) Le directeur peut exiger que la compagnie fasse appel à un ou plusieurs estimateurs compétents aux fins d'évaluer les biens mentionnés ci-après, s'il est d'avis que :

Surévaluation
d'un bien

- a) la valeur imputée aux biens immeubles, ou à un bien immeuble particulier, dont la compagnie ou l'une de ses filiales sont propriétaires est trop élevée;
- b) la somme garantie par hypothèque grevant un bien immeuble en faveur de la compagnie ou l'une de ses filiales, majorée des intérêts échus et courus, dépasse sa valeur hypothécable, ou que ce bien immeuble ne constitue pas une sûreté suffisante pour garantir le prêt et les intérêts;
- c) la valeur marchande d'un autre placement est inférieure au montant qui figure aux livres comptables de la compagnie ou de l'une de ses filiales.

Le directeur peut également procéder à cette estimation aux frais de la compagnie.

- Idem (2) If following an appraisal under subsection (1), it appears that the value of the asset is less than the amount at which it is carried on the books of the registered corporation or any of its subsidiaries or that the value is not adequate security for the loan and interest, the Director may order that the appraised value be reflected in calculations made for the purposes of this Act and the regulations.
- Idem (3) An order of the Director under subsection (2) shall be noted in the financial statement of the registered corporation.
- Investigation **204.**—(1) Where upon a statement made under oath it appears probable to the Superintendent that any corporation or other person has contravened any of the provisions of this Act or the regulations, the Superintendent by order may appoint any person to make such investigation as the Superintendent considers expedient for the due administration and enforcement of this Act, and in the order shall determine and prescribe the scope of the investigation.
- Scope of investigation (2) For the purpose of any investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine,
- (a) the affairs of the person or corporation in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with the corporation or other person and any property, assets or things owned, acquired or alienated in whole or in part by the corporation or other person or by any person or corporation acting on behalf of or as agent for the person or corporation; and
 - (b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the corporation or other person and the relationship that may at any time exist or have existed between the corporation or other person and any other person by reason of investments, purchases, commissions promised, secured or paid, interests held or acquired, purchase or sale of stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

(2) S'il appert, d'après l'évaluation effectuée aux termes du paragraphe (1), que la valeur d'un bien est inférieure à celle qui est indiquée aux livres comptables de la compagnie inscrite ou de l'une de ses filiales, ou que cette valeur ne constitue pas une sûreté suffisante pour garantir le prêt et les intérêts, le directeur peut ordonner que les calculs faits en application de la présente loi et des règlements reflètent la valeur estimative. Idem

(3) L'ordre du directeur aux termes du paragraphe (2) figure à l'état financier de la compagnie inscrite. Idem

204 (1) Si, aux termes d'une déclaration sous serment, il semble probable au surintendant qu'une compagnie ou une autre personne a contrevenu aux dispositions de la présente loi ou des règlements, celui-ci peut, au moyen d'une ordonnance, mandater une personne pour mener l'enquête qu'il juge opportune pour l'application et l'exécution de la présente loi. Le mandat précise la portée de cette enquête. Enquête

(2) Pour les fins de l'enquête visée au présent article, la personne mandatée à cette fin peut faire enquête et procéder à l'examen : Portée de l'enquête

- a) des affaires de la personne ou de la compagnie qui en fait l'objet ainsi que des livres comptables, papiers, documents, de la correspondance, des communications, négociations, opérations, enquêtes, prêts, emprunts de même que des paiements effectués à la compagnie ou à l'autre personne, par ces dernières ou pour leur compte, ou qui sont reliés ou ont trait à celles-ci. Il en est de même des autres biens, des éléments d'actif ou des choses dont elles-mêmes, ou leurs mandataires pour leur compte, sont propriétaires ou que ceux-ci ont acquis ou aliénés en totalité ou en partie;
- b) de l'actif ainsi que du passif, des dettes, engagements et obligations de la compagnie ou de l'autre personne, de leur situation financière ou autre, à n'importe quel moment. Il en est de même des rapports qui peuvent exister ou avoir existé à n'importe quel moment entre celles-ci et une autre personne en raison de placements, d'acquisitions, de commissions promises, assorties de sûretés ou versées, de droits détenus ou acquis, d'acquisition ou de vente d'actions ou autres biens, du transfert, de la négociation ou de la détention d'actions, de directions de liaison, de contrôle commun, d'abus d'influence ou de contrôle ou d'autres rapports.

Powers to
summon
witnesses and
require
production

(3) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in the person's custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court and no provision of the *Evidence Act* exempts any bank or corporation or any officer or employee thereof from the operation of this section.

R.S.O. 1980,
c. 145

Counsel

(4) A person giving evidence at an investigation under this section may be represented by counsel.

Seizure of
property

(5) Where an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the corporation or other person whose affairs are being investigated.

Inspection of
seized
documents

(6) Where any documents, records, securities or other property are seized under subsection (5), the documents, records, securities or other property shall be made available for inspection and copying by the corporation or other person from whom seized at a mutually convenient time and place if a request for an opportunity to inspect or copy is made by the person or corporation to the person appointed to make the investigation.

Accountants
and experts

(7) Where an investigation is ordered under this section, the Superintendent may appoint an accountant or other expert to examine documents, records, property and matters of the person or corporation whose affairs are being investigated.

Reports of
investigation

(8) Every person appointed under subsection (1) or (7) shall provide the Superintendent with a full and complete report of the investigation including any transcript of evidence and material in his or her possession relating to the investigation.

Application
of
R.S.O. 1980,
c. 274

205. Section 8 of the *Ministry of Consumer and Commercial Relations Act* applies to every person appointed under subsection 204 (1) or (7).

Order to
freeze
property

206.—(1) The Superintendent may,

(3) La personne chargée de l'enquête aux termes du présent article a les pouvoirs de la Cour suprême lors de procès civils pour assigner les témoins, les forcer à être présents, les contraindre à témoigner sous serment ou autrement, ainsi qu'à produire les documents, dossiers et objets qu'ils ont en leur possession ou sous leur garde. Le défaut ou le refus des témoins d'obtempérer rend ceux-ci, sur l'ordre d'un juge de la Cour suprême, passibles d'incarcération pour outrage au tribunal, comme dans le cas du défaut de se conformer à l'ordonnance ou au jugement de la Cour suprême. Aucune disposition de la *Loi sur la preuve* n'a pour effet de dispenser de l'application du présent article une banque, une compagnie ou leurs dirigeants ou employés.

Pouvoir d'assigner des témoins et d'exiger la production de documents

L.R.O. 1980, chap. 145

(4) La personne qui témoigne à l'enquête menée aux termes du présent article peut être représentée par un avocat.

Avocat

(5) La personne chargée de l'enquête aux termes du présent article peut saisir les documents, dossiers, valeurs mobilières ou autres biens de la compagnie ou de l'autre personne dont les affaires font l'objet de l'enquête et en prendre possession.

Saisie des biens

(6) La personne chargée de l'enquête rend accessibles à des fins d'inspection et de reproduction, à l'heure et au lieu convenus avec la compagnie ou la personne qui en fait la demande, les documents, dossiers, valeurs mobilières ou autres biens qui ont été saisis entre leurs mains en vertu du paragraphe (5).

Inspection des documents saisis

(7) Le surintendant peut nommer un comptable ou autre expert pour faire l'examen des documents, dossiers, biens et activités de la compagnie ou de la personne dont les affaires font l'objet de l'enquête visée au présent article.

Comptables et experts

(8) La personne nommée en vertu du paragraphe (1) ou (7) présente au surintendant un rapport complet et détaillé de l'enquête, y compris, le cas échéant, la transcription des témoignages et les documents qui s'y rapportent et que celle-ci a en sa possession.

Rapport de l'enquête

205 L'article 8 de la *Loi sur le ministère de la Consommation et du Commerce* s'applique à chaque personne nommée aux termes des paragraphes 204 (1) ou (7).

Cas d'application du chap. 274 des L.R.O. de 1980

206 (1) Le surintendant peut, au moyen d'un procédé qui produit un texte écrit ou imprimé, enjoindre à une compagnie ou à une autre personne de retenir les fonds, valeurs mobilières ou biens confiés à sa garde, notamment à titre de dépôt, par la compagnie ou la personne visées ci-après, dans les cas suivants :

Avoirs bloqués

- (a) where the Superintendent is about to order an investigation in respect of a corporation or other person under section 204 or during or after an investigation in respect of a person or corporation under section 204;
- (b) where the Director is about to make or has made a decision revoking the registration of any corporation; or
- (c) where proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any corporation or other person that in the opinion of the Superintendent are connected with or arise out of any business conducted by the corporation or other person,

by any method that provides a written or printed copy, direct any corporation or other person having on deposit or under control or for safekeeping any funds, securities or assets of the corporation or other person referred to in clause (a), (b) or (c) to hold such funds or securities or assets or direct the corporation or other person referred to in clause (a), (b) or (c) to refrain from withdrawing or dealing with any such funds, securities or assets from any other person having any of them on deposit, under control or for safekeeping or to hold all funds, securities or assets in their possession or control in trust for the Superintendent, or until the Superintendent in writing revokes the direction or consents to release any particular fund or property from the direction.

Idem

(2) A direction issued under subsection (1) does not apply to funds or securities in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the direction expressly so states and in the case of a bank or a corporation, the direction applies only to the offices, branches or agencies thereof named in the direction.

Application
for directions

(3) Any person or corporation named in a direction issued under subsection (1), if in doubt as to the application of the direction to particular funds, securities or assets, may apply to the Superintendent for an order of clarification.

Revocation
or
amendment
of
direction

(4) Upon the application of a registered corporation or other person directly affected by a direction issued under subsection (1), the Superintendent may make an order on such terms and conditions as he or she may impose revoking the direction or consenting to the release of any fund or security.

- a) le surintendant est sur le point d'ordonner une enquête aux termes de l'article 204 relativement à une compagnie ou à une autre personne, ou une telle enquête est déjà en cours ou est terminée;
- b) le directeur est sur le point de rendre ou a rendu sa décision de radier l'inscription d'une compagnie;
- c) des poursuites découlant d'une contravention à la présente loi ou aux règlements sont sur le point d'être intentées ou l'ont été contre une compagnie ou une autre personne, et le surintendant est d'avis que les poursuites sont reliées à des activités exercées par la compagnie ou l'autre personne ou en sont la conséquence.

Le surintendant peut de même enjoindre à la compagnie ou à l'autre personne visée aux alinéas a), b) ou c) de s'abstenir de disposer de tels fonds, valeurs mobilières ou biens ou d'en effectuer le retrait auprès de toute personne qui en aurait la garde, notamment à titre de dépôt, ou de les détenir en fiducie pour le compte du surintendant. L'ordre reste en vigueur jusqu'à ce que le surintendant le révoque par écrit. Il peut toutefois consentir à soustraire à son application un fonds ou un bien en particulier.

(2) Sauf disposition expresse à cet effet contenue dans l'ordre donné aux termes du paragraphe (1), celui-ci ne s'applique pas aux fonds ou aux valeurs mobilières en dépôt à la chambre de compensation d'une bourse ou à ceux qui font l'objet d'un transfert par un agent de transferts. Dans le cas des banques et des compagnies, cet ordre ne s'applique qu'aux bureaux, succursales ou agences qui y sont précisés.

Idem

(3) La personne ou la compagnie visée par l'ordre donné aux termes du paragraphe (1) et qui s'interroge au sujet de l'application de l'ordre à un fonds, à des valeurs mobilières ou à des biens en particulier peut s'adresser au surintendant, par voie de requête, en vue d'obtenir une ordonnance apportant des précisions.

Demande de
précisions

(4) Le surintendant, à la requête d'une compagnie inscrite ou d'une personne directement visée par l'ordre donné aux termes du paragraphe (1), peut, aux conditions qu'il fixe, révoquer l'ordre ou consentir à soustraire à son application un fonds ou une valeur mobilière.

Révocation
ou modifica-
tion de l'or-
dre

Notice to
land registry
offices

(5) In any of the circumstances mentioned in clause (1) (a), (b) or (c), the Superintendent may by any method that provides a written or printed copy notify any land registrar that proceedings are being or are about to be taken that may affect land belonging to the corporation or other person referred to in the notice, and the land registrar shall register the notice against the title of the land.

Idem

(6) A notice registered under subsection (5) has the same effect as the registration of a certificate of pending litigation or a caution, and the Superintendent may in writing revoke or modify the notice.

Liability for
short-fall

207.—(1) Where the Director, under clause 190 (1) (a), (c) or (d), has ordered a registered corporation or any of its subsidiaries to dispose of and realize any of its investments and if the amount realized therefrom falls below the amount paid by it for such investments, the directors of the corporation are jointly and severally liable for the payment to the corporation of the amount of the deficiency.

Idem

(2) If a director is present when any investment referred to in subsection (1) is authorized, forthwith, or if any director then absent, within twenty-four hours after he or she become aware of such investment, and is able to do so, sends his or her written dissent by registered mail or delivers it to the principal place of business of the corporation and requests that the dissent be entered in the minutes of the next meeting of the board of directors and, within eight days thereafter, notifies the Director in writing of the dissent, the director of the corporation may thereby, but not otherwise, exonerate himself or herself from liability.

Order for
compliance

208.—(1) Where it appears to the Superintendent that any registered corporation or other person has failed to comply with or is not complying with,

- (a) any approval given or any order made under this Act;
- (b) any voluntary compliance program entered into; or
- (c) any term, condition or restriction imposed on its registration,

the Superintendent, in addition to any other rights under this Act, may apply to the High Court of Justice for an order,

(5) Dans les cas visés aux alinéas (1) a), b) ou c), le surintendant peut, au moyen d'un procédé qui produit un texte écrit ou imprimé, notifier un registrateur des droits immobiliers qu'une poursuite susceptible de porter sur les biens-fonds appartenant à la compagnie ou à la personne visée est intentée ou sur le point de l'être. Le registrateur fait alors enregistrer l'avis sur le bien-fonds.

Avis aux bureaux d'enregistrement immobilier

(6) L'avis enregistré aux termes du paragraphe (5) a le même effet que l'enregistrement d'un certificat d'affaire en instance ou d'un avertissement. Le surintendant peut, par écrit, révoquer ou modifier cet avis.

Idem

207 (1) Si le directeur, agissant en vertu de l'alinéa 190 (1) a), c) ou d), enjoint à la compagnie inscrite ou à l'une de ses filiales de se départir de ses placements et de les réaliser, et si leur valeur de réalisation est inférieure à leur coût initial, les administrateurs de la compagnie sont solidairement tenus de combler l'insuffisance.

Responsabilité pour insuffisance

(2) L'administrateur présent au moment où le placement visé au paragraphe (1) est autorisé ne dégage sa responsabilité que s'il fait parvenir, sans délai et par écrit, sa dissidence par courrier recommandé ou la remet à l'établissement principal de la compagnie et demande qu'elle soit consignée au procès-verbal de la prochaine réunion du conseil d'administration. Il doit aussi, dans les huit jours, aviser le directeur de sa dissidence, par écrit. L'administrateur absent à ce moment ne dégage sa responsabilité que s'il agit de même dans les vingt-quatre heures qui suivent le moment où il apprend que le placement a été autorisé et a la possibilité d'agir.

Idem

208 (1) Lorsque le surintendant est d'avis qu'une compagnie inscrite ou une autre personne ne s'est pas conformée ou ne se conforme pas :

Ordonnance de se conformer

- a) à une approbation ou un ordre donnés ou une ordonnance rendue en vertu de la présente loi;
- b) au programme d'adhésion volontaire auquel elle a souscrit;
- c) à l'une des conditions ou restrictions dont est assortie son inscription,

il peut, outre les autres droits que lui accorde la présente loi, demander par voie de requête à la Haute Cour de justice de rendre une ordonnance aux fins :

- (d) directing the person or corporation to comply with the approval, program or order, term, condition or restriction or restraining the person or corporation from violating the approval, program, order, term, condition or restriction; and
- (e) directing the directors and officers of the person or corporation to cause the person or corporation to comply with or to cease violating the approval, program or order of the Director or Superintendent, or term, condition or restriction imposed on its registration,

and the court may make such order as it considers appropriate.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1).

Oppression
remedy

209.—(1) A depositor, shareholder, creditor, a person for whom the registered corporation acts in a fiduciary capacity or the Superintendent may apply to the High Court of Justice for an order under this section.

Idem

(2) Where, upon an application under subsection (1), the court is satisfied that in respect of a registered corporation or any of its affiliates,

- (a) any act or omission of the corporation or any of its affiliates effects or threatens to effect a result;
- (b) the business or affairs of the corporation or any of its affiliates are, have been or are threatened to be carried on or conducted in a manner; or
- (c) the powers of the directors of the corporation or any of its affiliates are, have been or are threatened to be exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any shareholder, depositor, creditor or person for whom the corporation acts in a fiduciary capacity, the court may make an order to rectify the matters complained of.

- d) d'enjoindre à la personne ou la compagnie de se conformer à l'approbation, au programme, à l'ordre, à l'ordonnance, à la condition ou à la restriction, ou d'interdire à celles-ci d'y contrevenir;
- e) d'enjoindre aux administrateurs et dirigeants de la personne ou de la compagnie de faire en sorte que ces dernières se conforment à l'approbation, au programme, à l'ordre du directeur ou du surintendant ou aux conditions dont est assortie l'inscription ou qu'elles mettent fin à toute contravention à leur égard.

La Haute Cour peut rendre l'ordonnance qu'elle juge pertinente.

(2) Il peut être interjeté appel devant la Cour divisionnaire de l'ordonnance rendue en vertu du paragraphe (1). Appel

209 (1) Le déposant, l'actionnaire, le créancier, la personne que représente la compagnie inscrite en qualité de fiduciaire, ainsi que le surintendant peuvent s'adresser à la Haute Cour de justice, par voie de requête, en vue d'obtenir une ordonnance en vertu du présent article. Recours en cas d'abus

(2) Si le tribunal est convaincu, dans le cadre d'une requête présentée en vertu du paragraphe (1) : Idem

- a) qu'un acte ou une omission d'une compagnie inscrite ou d'un membre du même groupe entraînent ou risquent d'entraîner un résultat qui lèse gravement les intérêts d'un actionnaire, d'un déposant, d'un créancier ou d'une personne que la compagnie représente à titre de fiduciaire, ou qui, de façon injuste, porte atteinte à leurs intérêts ou n'en tient pas compte;
- b) que la compagnie ou un membre du même groupe conduisent leurs affaires d'une manière susceptible d'entraîner le résultat décrit à l'alinéa a), l'ont fait ou risquent de le faire;
- c) que les administrateurs de la compagnie ou d'un membre du même groupe ont exercé leurs pouvoirs d'une manière susceptible d'entraîner le résultat décrit à l'alinéa a), l'ont fait ou risquent de le faire,

le tribunal peut rendre une ordonnance afin de redresser la situation.

Notice to
Superin-
tendent

(3) Where a depositor, shareholder, creditor or person for whom the corporation acts in a fiduciary capacity makes an application under subsection (1), he or she shall give notice to the Superintendent.

Court order

(4) In connection with an application under this section, the court may make any interim or final order it thinks appropriate including, without limiting the generality of the foregoing,

- (a) an order restraining the conduct complained of;
- (b) an order to regulate a corporation's affairs by amending the by-laws;
- (c) an order appointing directors in place of or in addition to all or any of the directors then in office;
- (d) an order varying or setting aside a transaction or contract to which a registered corporation is a party and compensating the registered corporation or any other party to the transaction or contract;
- (e) an order requiring a registered corporation, within a time specified by the court, to produce to the court or an interested person financial statements or an accounting in such other form as the court may determine;
- (f) an order compensating an aggrieved person;
- (g) an order directing rectification of the records of a corporation; or
- (h) an order requiring the trial of any issue.

Want of
prosecution

210.—(1) An application under section 209 shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit and, if the court determines that the interests of any person described in subsection 209 (1) may be substantially affected by such stay, discontinuance, settlement or dismissal, the court may order any party to the application to give notice to the person.

Costs

(2) A person described in subsection 209 (1) is not required to give security for costs in any application under that section.

(3) Le déposant, l'actionnaire, le créancier ou la personne que représente la compagnie à titre de fiduciaire et qui présentent une requête aux termes du paragraphe (1), en donnent avis au surintendant.

Avis au surintendant

(4) Pour donner suite à la requête présentée aux termes du présent article, le tribunal peut rendre l'ordonnance provisoire ou définitive qu'il estime pertinente, notamment pour :

Ordonnance du tribunal

- a) interdire le comportement reproché;
- b) régler les affaires de la compagnie en modifiant son règlement intérieur;
- c) faire des nominations au conseil d'administration, soit pour remplacer tous les administrateurs en fonction ou certains d'entre eux, soit pour en augmenter le nombre;
- d) modifier ou annuler une opération ou un contrat auxquels est partie la compagnie inscrite, et indemniser la compagnie ou une autre partie à l'opération ou au contrat;
- e) enjoindre à la compagnie inscrite de fournir dans le délai imparti, au tribunal ou à la personne intéressée, soit des états financiers, soit un compte-rendu comptable dans une autre forme que précise le tribunal;
- f) indemniser une personne lésée;
- g) rectifier les dossiers de la compagnie;
- h) faire instruire toute question litigieuse.

210 (1) Le sursis, la transaction ou le rejet, faute de poursuite, de la requête visée à l'article 209 ou le désistement du requérant, sont subordonnés à leur approbation par le tribunal aux conditions qu'il estime pertinentes. Le tribunal peut également ordonner à toute partie d'en donner avis à la personne visée au paragraphe 209 (1) s'il conclut que les droits de celle-ci peuvent être sérieusement atteints par cette mesure.

Absence de poursuite

(2) La personne visée au paragraphe 209 (1) n'est pas tenue de fournir un cautionnement pour dépens lors de la requête visée à cet article.

Dépens

Idem

(3) In an application under section 209, the court may at any time order the registered corporation or any of its affiliates to pay to the shareholder, depositor, creditor or person to whom the corporation acts in a fiduciary capacity or Superintendent interim costs, including reasonable legal fees and disbursements, for which interim costs the applicant may be held accountable to the corporation or its affiliate upon final disposition of the application.

PART XIII

OFFENCES AND PENALTIES

Carrying on
business of
corporation
prohibited

211.—(1) No person, other than a registered corporation, shall conduct, undertake or transact in Ontario the business of a loan corporation or of a trust corporation.

Carrying on
business of
trust
corporation
prohibited

(2) No body corporate, other than a registered trust corporation, shall offer its services to the public as, or accept or execute the office of,

- (a) executor, administrator or trustee; or
- (b) guardian of any minor's estate or committee of any mentally incompetent person's estate.

Restriction
on
use of name

(3) No person, other than a registered trust corporation, shall hold itself out to the public in Ontario as a registered trust corporation by using in its name the words "trust corporation", "trust company", "trustco", "compagnie de fiducie" or "société de fiducie" or any similar words in its name in conjunction with its business or undertakings, unless such name was legally in use before the day this section comes into force.

Carrying on
business by
corporations

(4) No corporation, other than a registered corporation, shall hold itself out to the public in Ontario as a registered corporation by conducting, undertaking or transacting any part or aspect of the business of a trust corporation or loan corporation.

Soliciting
business

(5) No person, other than a registered corporation and a person duly authorized by it to act on its behalf, shall solicit the business of a trust corporation or loan corporation.

(3) À la suite de la requête visée à l'article 209, le tribunal peut ordonner à la compagnie inscrite ou au membre du même groupe que celle-ci de verser aux actionnaires, déposants, créanciers, aux personnes que la compagnie représente à titre de fiduciaire ou au surintendant, des dépens provisoires, y compris des honoraires légaux et débours raisonnables. Le requérant peut être redevable de ces dépens provisoires envers la compagnie ou le membre du même groupe que celle-ci lors du règlement définitif de la requête. Idem

PARTIE XIII

INFRACTIONS ET PEINES

211 (1) Nulle personne autre que la compagnie inscrite ne peut poursuivre, entreprendre ou exercer en Ontario les activités d'une compagnie de prêt ou d'une compagnie de fiducie. Interdiction d'exercer les activités d'une compagnie

(2) Nulle personne morale autre que la compagnie de fiducie inscrite ne peut offrir au public ses services ou accepter ou exercer quelque fonction en tant : Interdiction d'exercer les activités d'une compagnie de fiducie

- a) qu'exécuteur testamentaire, administrateur successoral ou fiduciaire;
- b) que tuteur aux biens d'un enfant mineur ou curateur aux biens d'une personne frappée d'incapacité mentale.

(3) Nulle personne autre que la compagnie de fiducie inscrite ne peut se faire passer pour une telle compagnie auprès du public en Ontario en se désignant sous une dénomination sociale qui comporte les mots «trust corporation», «trust company», «trustco», «compagnie de fiducie» ou «société de fiducie» ou autres termes semblables, relativement à ses activités ou entreprises, sauf si la personne employait légalement cette dénomination sociale avant l'entrée en vigueur du présent article. Restriction à l'utilisation d'une dénomination sociale

(4) Nulle compagnie autre que la compagnie inscrite ne peut se faire passer pour une telle compagnie auprès du public en Ontario en poursuivant, en entreprenant ou en exerçant une partie des activités d'une compagnie de fiducie ou d'une compagnie de prêt. Activités exercées par les compagnies

(5) Nulle personne autre que la compagnie inscrite et son mandataire autorisé ne peut solliciter la clientèle propre à la compagnie de prêt ou à la compagnie de fiducie. Sollicitation

Action of
promoters,
etc.

(6) No person shall undertake, transact or solicit in Ontario any part or aspect of the business of a trust corporation or a loan corporation for a body corporate that is not registered under this Act.

Prohibition
on certain
activities

(7) No registered corporation, directly or indirectly, through a subsidiary or otherwise, unless permitted under this Act, shall,

- (a) deal in goods, wares and merchandise or engage in any trade or business;
- (b) provide letters of credit or like instruments;
- (c) guarantee the performance of any obligation by a person other than the corporation or its subsidiary unless the corporation has received collateral at least equal to the amount of the obligation guaranteed; or
- (d) issue notes of the corporation payable to bearer on demand and intended for circulation.

Offences

212.—(1) Every person who,

- (a) contravenes any provision of section 211;
- (b) fails to comply with any written undertaking given under this Act;
- (c) fails to comply with an order made under this Act;
- (d) contravenes any provision of Part IX;
- (e) allows their name to be used on behalf of a person having a beneficial interest in a corporation for the purpose of disguising such interest;
- (f) contravenes reporting requirements related to insider trading in respect of a corporation;
- (g) traffics in a shareholder's list contrary to section 132;
- (h) accepts or receives or gives a grant or gratuity or holds shares contrary to section 177;

(6) Nulle personne ne peut, pour le compte d'une personne morale qui n'est pas inscrite en vertu de la présente loi, entreprendre ou exercer en Ontario une partie des activités d'une compagnie de fiducie ou d'une compagnie de prêt ou solliciter la clientèle qui leur est propre.

Démarches de promoteurs, etc.

(7) Sauf autorisation accordée aux termes de la présente loi, la compagnie inscrite ne peut, directement ou indirectement, par l'entremise de ses filiales ou autrement :

Interdiction d'exercer certaines activités

- a) faire le commerce d'effets mobiliers, d'objets et de marchandises ou s'adonner à un commerce;
- b) souscrire des lettres de crédit ou effets semblables;
- c) cautionner l'exécution d'une obligation par une personne autre que la compagnie ou sa filiale, à moins que la compagnie n'ait reçu une sûreté d'une valeur au moins égale au montant de l'obligation garantie;
- d) délivrer des billets au porteur payables sur demande, souscrits par la compagnie et destinés à être mis en circulation.

212 (1) Est coupable d'une infraction toute personne qui : Infractions

- a) enfreint une disposition de l'article 211;
- b) ne se conforme pas à un engagement écrit pris aux termes de la présente loi;
- c) enfreint une ordonnance prise ou rendue ou un ordre donné en vertu de la présente loi;
- d) enfreint une disposition de la partie IX;
- e) consent à l'utilisation de son nom ou de sa dénomination sociale pour le compte du titulaire d'un droit à titre bénéficiaire dans une compagnie, aux fins de permettre à ce dernier de dissimuler son droit;
- f) ne se conforme pas aux obligations de divulgation relatives aux transactions d'initiés relativement aux compagnies de fiducie ou aux compagnies de prêt;
- g) trafique des listes d'actionnaires contrairement à l'article 132;
- h) accepte, reçoit ou accorde un don ou une gratification, ou détient des actions, contrairement à l'article 177;

- (i) fails to report to the Superintendent as required under this Act;
- (j) in the case of a registered corporation, contravenes any term, condition or restriction imposed on its registration; or
- (k) knowingly provides false information in relation to any matter under this Act,

is guilty of an offence.

Penalty

(2) On conviction for an offence referred to in subsection (1) or subsection 60 (4) or 61 (5), the person convicted is liable on a first conviction to a fine of not more than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000.

Derivative

(3) Every person who caused, authorized, permitted or participated in an offence referred to in subsection (1) or subsection 60 (4) or 61 (5) is guilty of an offence and on conviction is liable on a first conviction to a fine of not more than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000.

Saving,
voluntary
compliance
program

(4) Notwithstanding subsection (1), a person for whom a voluntary compliance program has been approved by the Superintendent who complies fully with such program shall not be prosecuted for or convicted of an offence in respect of the breach of this Act which the program was intended to remedy.

Saving,
disclosure

(5) A person is not guilty of an offence under clause (1) (d) if the person was not a party to the offence and reported the failure to comply with Part IX as set out in section 149 or 150.

Limitation
period

213. No proceeding for an offence under this Part shall be commenced in any court more than two years after the facts upon which the proceedings are based first came to the knowledge of the Superintendent.

Order to
comply

214. Where a person is convicted of an offence under this Act or the regulations, the court in which proceedings in respect of the offence are taken, in addition to any punishment it may impose, may order that person to comply with the provisions of this Act or the regulations for the contravention of which the person has been convicted.

Restitution

215. Where a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto.

- i) ne présente pas au surintendant un rapport exigé aux termes de la présente loi;
- j) dans le cas d'une compagnie inscrite, enfreint une condition ou restriction dont est assortie son inscription;
- k) fournit sciemment de faux renseignements concernant tout point visé à la présente loi.

(2) La personne déclarée coupable d'une infraction visée au paragraphe (1) ou aux paragraphes 60 (4) ou 61 (5) est passible d'une amende d'au plus 100 000 \$ à la première déclaration de culpabilité et d'au plus 200 000 \$ à chacune des déclarations subséquentes. Peine

(3) Toute personne qui a causé, autorisé ou permis la perpétration de l'infraction visée au paragraphe (1) ou aux paragraphes 60 (4) ou 61 (5), ou qui y était partie, est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 100 000 \$ à la première déclaration de culpabilité et d'au plus 200 000 \$ à chacune des déclarations subséquentes. Infraction dérivée

(4) Malgré le paragraphe (1), la personne qui se conforme à toutes les dispositions d'un programme d'adhésion volontaire approuvé à son égard par le surintendant n'est passible d'aucune poursuite ou condamnation à la suite de la contravention à la présente loi que ce programme était destiné à corriger. Exception, programme d'adhésion volontaire

(5) N'est coupable d'aucune infraction aux termes de l'alinéa (1) d) la personne qui n'était pas partie à l'infraction et a signalé l'omission de se conformer à la partie IX, conformément aux articles 149 ou 150. Exception, en cas de divulgation

213 Est irrecevable la poursuite intentée relativement à une infraction à la présente partie plus de deux ans après que les faits sur lesquels elle se fonde ont été portés à la connaissance du surintendant. Prescription

214 Le tribunal qui prononce la déclaration de culpabilité peut, en plus de toute autre peine, ordonner à la personne reconnue coupable d'une infraction à la présente loi ou aux règlements de se conformer à la disposition à l'égard de laquelle elle a été déclarée coupable d'une infraction. Ordonnance de se conformer

215 Le tribunal qui prononce la déclaration de culpabilité peut, en plus de toute autre peine, ordonner à la personne reconnue coupable de l'infraction aux termes de la présente loi de verser une indemnité ou de faire restitution en conséquence. Restitution

PART XIV

MISCELLANEOUS AND REGULATIONS

Deposits
from persons
unable to
contract

216. A registered corporation, without the authority, aid, assistance or intervention of any other person or official being required, may receive deposits from any person regardless of the person's age, status or condition in life, and whether the person is qualified by law to enter into ordinary contracts or not, and from time to time may pay any or all of the principal thereof and any or all of the interest thereon to or to the order of the person, unless before payment, the money on deposit is claimed by some other person in a court proceeding to which the corporation is a party and in respect of which service of a statement of claim or other process originating such proceeding has been made on the corporation, or in any other proceeding pursuant to which an injunction or order made by the court requiring the corporation not to make payment of such money or to make payment thereof to some person other than the depositor has been served on the corporation, and in the case of any such claim so made the money so deposited may be paid to the depositor with the consent of the claimant or to the claimant with the consent of the depositor.

Direction as
to disposition
of deposits
on
death

217.—(1) A person who has deposits with a registered corporation not exceeding \$2,000 may, by a writing, signed by him or her and deposited with the corporation, nominate any person to receive the amount thereof at his or her death.

Rights of
corporation

(2) Upon receiving a statutory declaration as to the death of a person who has made a nomination under subsection (1), the corporation may substitute on its books the name of the nominee in place of the name of such person or may forthwith pay to the nominee the amount due.

Where no
direction

(3) Where a depositor as described in subsection (1) dies without making a nomination in accordance with that subsection, the deposit may, without letters probate or letters of administration being taken out, be paid or transferred to,

- (a) the person who appears to the corporation to be entitled under the will of such depositor or in the case of intestacy under the law relating to devolution of property to receive it; or
- (b) any person who appears to the corporation to be equitably entitled thereto by reason of having incurred expense for the support, medical attendance or burial of the depositor,

PARTIE XIV

DISPOSITIONS DIVERSES ET RÈGLEMENTS

216 La compagnie inscrite peut, sans l'aide, le concours ni l'intervention d'une autre personne ou d'un fonctionnaire, recevoir les dépôts de toute personne, sans égard à son âge, sa qualité, sa condition ou sa capacité juridique de contracter. Elle peut de même verser à cette personne ou à son ordre, une partie ou la totalité du principal et des intérêts, sauf si, avant ce versement, les sommes déposées sont revendiquées par une autre personne dans une instance judiciaire à laquelle est partie la compagnie et que cette dernière a reçu signification d'une déclaration ou d'un autre acte introductif d'instance. Cette exception vaut aussi dans le cas de l'instance dans laquelle une injonction ou autre ordonnance enjoignant à la compagnie de ne pas verser la somme d'argent ou d'en effectuer le versement à une personne autre que le déposant a été rendue et signifiée à la compagnie. Si une telle revendication est présentée, les sommes déposées peuvent être versées soit au déposant, soit à l'auteur de la demande, de leur consentement réciproque.

Dépôts par les personnes n'ayant pas la capacité de contracter

217 (1) La personne dont les dépôts effectués auprès de la compagnie inscrite ne dépassent pas 2 000 \$ peut, dans un écrit signé de sa main et déposé auprès de la compagnie, désigner le bénéficiaire de ces sommes à son décès.

Disposition des dépôts à la mort du déposant

(2) Dès réception d'une déclaration solennelle concernant le décès de la personne qui est l'auteur de la désignation visée au paragraphe (1), la compagnie peut, dans ses dossiers, substituer au nom de cette personne celui de la personne désignée ou peut immédiatement verser la somme due à la personne désignée.

Droits de la compagnie

(3) Au décès du déposant visé au paragraphe (1) qui n'a pas fait de désignation aux termes de ce paragraphe, les sommes déposées peuvent, sans qu'il y ait délivrance de lettres d'homologation ou d'administration, être versées à la personne qui, de l'avis de la compagnie, paraît y avoir droit :

Absence de disposition expresse

- a) aux termes du testament du déposant ou de la loi qui régit les successions *ab intestat*, selon le cas;
- b) en *equity*, en raison des frais engagés par celle-ci pour les aliments, le traitement médical ou l'inhumation du déposant.

upon receipt by the corporation of the statutory declaration of the person so claiming stating the time and place and death of the applicant and the facts supporting the claim.

Payments by
mistake

218. Where a registered corporation, after the death of a depositor, has paid or transferred a deposit to the person who at the time appeared to be entitled thereto, the payment or transfer is valid with respect to any demand from any other person as legatee, next of kin or personal representative of the deceased against the corporation, but the legatee, next of kin or representative is entitled to recover the amount of the deposit from the recipient or transferee.

Delivery of
notices

219.—(1) Delivery of any written notice or document for any purpose of this Act, where the mode is not otherwise specified, may be delivered by first class ordinary mail or first class registered mail,

- (a) in the case of a registered corporation, addressed to it or its chief executive officer at its principal place of business;
- (b) in the case of a director, addressed to the director at his or her address as shown on the records of the Superintendent; and
- (c) in the case of the Superintendent, addressed to the Superintendent at his or her office.

Idem

(2) In the case of an extra-provincial corporation, a notice or document may be delivered in accordance with clause (1) (a) or may be delivered by first class or registered mail addressed to it or its agent or any of its agents at the address thereof as set out in the most recent application filed under section 32.

Regulations

220. The Lieutenant Governor in Council may make regulations,

- (a) prescribing forms and providing for their use;
- (b) requiring the payment of annual fees and fees for letters patent of incorporation and supplementary letters patent and in respect of any function performed by the Superintendent or Director under this Act or the regulations and prescribing the amounts thereof;

Ceci peut se faire dès réception par la compagnie de la déclaration solennelle de l'auteur de la demande, indiquant la date et le lieu du décès du déposant et les faits à l'appui de sa demande.

218 Le versement ou la cession par la compagnie inscrite, à la suite du décès du déposant, des sommes déposées à la personne qui paraissait alors y avoir droit est valable face à toute demande de la part du légataire, du plus proche parent ou de l'ayant droit du défunt. Ces personnes sont toutefois fondées à recouvrer ces sommes du bénéficiaire ou du cessionnaire.

Versement
effectué par
erreur

219 (1) L'envoi d'un avis écrit ou autre document pour l'application de la présente loi s'effectue, à moins qu'un autre mode ne soit précisé, par courrier ordinaire ou recommandé de première classe :

Envoi des
avis

- a) dans le cas de la compagnie inscrite, à son adresse ou à celle du responsable de la direction à l'établissement principal de la compagnie;
- b) dans le cas de l'administrateur, à l'adresse de ce dernier qui figure aux dossiers du surintendant;
- c) dans le cas du surintendant, à son bureau.

(2) Dans le cas de la compagnie extraprovinciale, l'avis ou le document peut être envoyé, soit conformément à l'alinéa (1) a), soit par courrier de première classe ou recommandé à l'adresse de la compagnie ou de son mandataire ou de l'un d'eux à l'adresse qui figure à la demande la plus récente déposée aux termes de l'article 32.

Idem

220 Le lieutenant-gouverneur en conseil peut, par règlement :

Règlements

- a) prescrire des formules et prévoir les modalités de leur emploi;
- b) exiger l'acquiescement de droits annuels, ainsi que de droits pour la délivrance de lettres patentes de constitution et de lettres patentes supplémentaires, de même que de droits reliés à l'exercice des fonctions du surintendant ou du directeur aux termes de la présente loi ou des règlements, et prescrire les montants de ces droits;

- (c) exempting persons holding such percentage, as may be set out in the regulation, of shares of a corporation from the requirements of section 63;
- (d) exempting classes of corporations from the requirements of section 63;
- (e) respecting the records, papers and documents to be retained by corporations and the length of time they shall be so retained;
- (f) requiring the disclosure to borrowers of terms and conditions of loans and mortgages and of interest rates in lending transactions;
- (g) prescribing words or expressions that are prohibited in the name of a corporation and prescribing conditions for the use of names by corporations;
- (h) prescribing the information that shall be maintained in the Loan Corporations Register, the Trust Corporations Register and the public file of each corporation;
- (i) governing the custody and safekeeping of securities, property or trust assets registered in the name of or held by a registered corporation;
- (j) prescribing financial statements required under this Act and the method of their preparation;
- (k) prescribing information to be placed before the annual meeting of a corporation and requiring a corporation to make public such information as may be set out in the regulations;
- (l) governing the reporting of information to and by the Trust Companies Association of Canada;
- (m) prescribing the method of calculating the capital base of a corporation, including what assets may or may not be included therein and the manner in which the value of any such asset shall be calculated or determined for such purpose;
- (n) prescribing the method of calculating the total assets of a corporation, including the manner in which the value of any such asset shall be calculated or determined for such purpose;

- c) soustraire à l'application de l'article 63 les détenteurs d'un pourcentage d'actions de la compagnie, tel que fixé au règlement;
- d) soustraire à l'application de l'article 63 des catégories de compagnies;
- e) prévoir les dossiers, écrits et documents que la compagnie doit conserver, de même que la durée de leur conservation;
- f) exiger la divulgation aux emprunteurs des conditions dont sont assorties les prêts et les hypothèques, ainsi que des taux d'intérêts relatifs aux opérations de prêt;
- g) prescrire des mots ou expressions dont l'emploi dans la dénomination sociale d'une compagnie est interdit, et prescrire les conditions d'utilisation de dénominations sociales par les compagnies;
- h) prescrire les renseignements qui sont conservés dans le Registre des compagnies de prêt, le Registre des compagnies de fiducie, et le dossier public de chacune d'elles;
- i) régir la garde et le maintien en lieu sûr des valeurs mobilières, des biens et notamment des biens détenus en fiducie, conservés par la compagnie inscrite ou inscrits à son nom;
- j) prescrire les états financiers exigés aux termes de la présente loi, ainsi que la façon de les établir;
- k) prescrire les renseignements devant être présentés lors de l'assemblée annuelle de la compagnie, et exiger que celle-ci rende publics les renseignements que prescrit le règlement;
- l) régir la communication de renseignements à l'Association des compagnies de fiducie du Canada, ainsi que leur diffusion par celle-ci;
- m) prescrire le mode de calcul de l'apport en capital de la compagnie, y compris les biens devant être inclus ou non et, à cette fin, le mode d'évaluation de chacun de ces biens;
- n) prescrire le mode de calcul de l'actif total de la compagnie, y compris le mode d'évaluation à cette fin de chacun des biens qui le composent;

- (o) prescribing classes of loans, investments or transactions for the purposes of Part IX;
- (p) prescribing limits in dollar amounts or in a percentage of total assets of investments in any asset or any class of assets and where a limit has been imposed by this Act with respect to any asset or class of assets, prescribing limits that are more restrictive than those set out in the Act;
- (q) prescribing the method of calculating liquidity of a corporation;
- (r) governing the issue of subordinated notes;
- (s) governing the establishment and operation of common trust funds and the investment of trust money in such funds;
- (t) requiring the bonding and insurance coverage of and for directors, officers, agents and employees of the corporation and of property of the corporation or held by it;
- (u) governing the activities of a registered corporation in dealing with persons who act as agents for the corporation and governing the relationships between the corporation and its agents;
- (v) prescribing terms and conditions for the establishment and operation of subsidiaries;
- (w) relating to reports by auditors;
- (x) prescribing qualifications for appointment as an officer of a corporation;
- (y) prescribing duties for audit committees and investments committees;
- (z) prescribing any matter referred to in this Act as being prescribed by the regulations.

Exemption
from
minimum
capital
requirements

221. The Superintendent may exempt a trust corporation that in other respects complies with this Act from compliance with the minimum capital requirements under subsection 10 (5) or clause 33 (a), subject to such terms and conditions as may be prescribed and to such terms and conditions as the Superintendent may impose, so long as the trust corporation is offering its services primarily in a community that, in the opinion of the Superintendent, would not otherwise be adequately served by a trust corporation.

- o) prescrire des catégories de prêts, de placements ou d'opérations pour l'application de la partie IX;
- p) prescrire la limite, soit en dollars, soit en pourcentage, du total de l'actif qui peut être placé dans un bien ou une catégorie de biens et, lorsqu'une limite est imposée par la présente loi relativement à un bien ou à une catégorie de biens, prescrire des limites plus restrictives que celles énoncées à la présente loi;
- q) prescrire le mode de calcul des liquidités de la compagnie;
- r) régir la délivrance des titres subalternes;
- s) régir l'établissement et l'exploitation des fonds en fiducie collectifs et le placement dans ces fonds des sommes détenues en fiducie;
- t) exiger la souscription de cautionnements par les administrateurs, dirigeants, mandataires et employés de la compagnie ainsi que la souscription d'assurances à leur égard et à l'égard des biens dont elle a la propriété ou qui sont confiés à sa garde;
- u) régir les activités de la compagnie inscrite dans le cadre de ses rapports avec ses mandataires, ainsi que les rapports entre ces derniers et la compagnie;
- v) prescrire les conditions relatives à l'établissement et à l'exploitation de filiales;
- w) régir les rapports des vérificateurs;
- x) prescrire les qualités requises pour accéder au poste de dirigeant d'une compagnie;
- y) prescrire les obligations qui incombent aux comités de vérification et aux comités de placements;
- z) prescrire toute question qui selon la présente loi est prescrite par les règlements.

221 Sous réserve des conditions prescrites et de celles que peut imposer le surintendant, celui-ci peut dispenser la compagnie de fiducie qui s'est par ailleurs conformée à la présente loi de l'observation des normes de capital minimal fixées par le paragraphe 10 (5) ou par l'alinéa 33 a), tant que ses services sont offerts principalement à une collectivité dont les besoins, de l'avis du surintendant, ne seraient pas autrement satisfaits de façon convenable par une compagnie de fiducie.

Dispense
d'observer les
normes de
capital mini-
mal

Transition,
capital levels

222.—(1) Notwithstanding any other provision of this Act, where a corporation, immediately before the coming into force of clause 33 (a) of this Act, was registered under the *Loan and Trust Corporations Act*, being chapter 249 of the Revised Statutes of Ontario, 1980, the minimum capital requirements under that clause shall not apply to the corporation until the 1st day of January, 1991 so long as the corporation maintains the minimum capital requirements required by the predecessor of this Act or such greater minimum capital requirements as the Lieutenant Governor in Council may order.

Extension
of time

(2) The Lieutenant Governor in Council may extend the period for compliance with minimum capital requirements under clause 33 (a), beyond the 1st day of January, 1991, subject to such terms and conditions as the Lieutenant Governor in Council may impose.

Transition,
directors

(3) Notwithstanding any other provision of this Act, the board of directors of a loan corporation or a trust corporation in office immediately before the coming into force of this section may continue in office until the annual meeting next following the coming into force of this section.

Transition,
quantum
limits
on
investments

(4) Notwithstanding that an investment was made by a registered corporation or any of its subsidiaries before the coming into force of this section, the corporation or subsidiary shall divest itself of the investment within twelve months of the coming into force of this section, if the investment, had it been made after the coming into force of this section, would exceed any limit imposed by section 161, 165 or 166.

Duration of
authority to
carry on
business

223.—(1) No corporation shall carry on the business of a loan corporation or of a trust corporation after the 1st day of July, 1996.

Extension
of time

(2) The Lieutenant Governor in Council may make regulations changing the date set out in subsection (1) to a date not later than the 1st day of July, 1997.

PART XV

AMENDMENTS, REPEALS, COMMENCEMENT, SHORT TITLE

224. Subparagraph ii of paragraph 32 of subsection 1 (1) of the *Securities Act*, being chapter 466 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

222 (1) Malgré toute autre disposition de la présente loi, les normes de capital minimal fixées par l'alinéa 33 a) ne s'appliquent pas avant le 1^{er} janvier 1991 à la compagnie qui était, immédiatement avant l'entrée en vigueur de cet alinéa, inscrite en vertu de la *Loi sur les compagnies de prêt et de fiducie*, qui constitue le chapitre 249 des Lois refondues de l'Ontario de 1980. La présente disposition s'applique tant que la compagnie observe les normes de capital minimal fixées en vertu de la loi que la présente loi remplace, ou les normes plus élevées décrétées par le lieutenant-gouverneur en conseil.

Dispositions
transitoires
relatives aux
normes de
capital

(2) Le lieutenant-gouverneur en conseil peut, sous réserve des conditions qu'il fixe éventuellement, proroger au-delà du 1^{er} janvier 1991 le délai imparti aux compagnies pour se conformer aux normes de capital minimal fixées par l'alinéa 33 a).

Prorogation
du délai

(3) Malgré toute autre disposition de la présente loi, le mandat des administrateurs de la compagnie de prêt ou de la compagnie de fiducie qui étaient en fonction immédiatement avant l'entrée en vigueur du présent article se poursuit jusqu'à l'assemblée annuelle qui suit l'entrée en vigueur du présent article.

Dispositions
transitoires
relatives aux
administrateurs

(4) Même dans le cas des placements effectués avant l'entrée en vigueur du présent article, la compagnie inscrite ou sa filiale est tenue de se dessaisir, dans les douze mois de l'entrée en vigueur du présent article, des placements dont le montant dépasserait la limite fixée par les articles 161, 165 ou 166, s'ils avaient été effectués après l'entrée en vigueur du présent article.

Dispositions
transitoires,
limite relative
aux montants
des place-
ments

223 (1) Nulle compagnie ne peut poursuivre les activités d'une compagnie de prêt ou d'une compagnie de fiducie au-delà du 1^{er} juillet 1996.

Date limite
de l'exercice
de ses activi-
tés

(2) Le lieutenant-gouverneur en conseil peut, par règlement, porter la date fixée au paragraphe (1) à une date qui n'est pas postérieure au 1^{er} juillet 1997.

Prorogation
du délai

PARTIE XV

MODIFICATIONS, ABROGATIONS, ENTRÉE EN VIGUEUR, TITRE ABRÉGÉ

224 La sous-disposition ii de la disposition 32 du paragraphe 1 (1) de la *Loi sur les valeurs mobilières*, qui constitue le chapitre 466 des Lois refondues de l'Ontario de 1980, est abrogée et remplacée par ce qui suit :

- 1986, c ...
- ii. administered by a trust corporation registered under the *Loan and Trust Corporations Act, 1986* and consists of a common trust fund as defined in section 1 of that Act.

Repeals

225. The following are repealed:

1. The *Loan and Trust Corporations Act*, being chapter 249 of the Revised Statutes of Ontario, 1980.
2. The *Loan and Trust Corporations Amendment Act, 1982*, being chapter 62.

Commence-
ment

226. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

227. The short title of this Act is the *Loan and Trust Corporations Act, 1986*.

- ii. administered by a trust corporation registered under the *Loan and Trust Corporations Act, 1986* and consists of a common trust fund as defined in section 1 of that Act. 1986, c...

225 Sont abrogées :

Abrogations

1. La *Loi sur les compagnies de prêt et de fiducie*, qui constitue le chapitre 249 des Lois refondues de l'Ontario de 1980.
2. La *Loi de 1982 modifiant la Loi sur les compagnies de prêt et de fiducie*, qui constitue le chapitre 62.

226 La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

Entrée en
vigueur

227 Le titre abrégé de la présente loi est *Loi de 1986 sur les compagnies de prêt et de fiducie*.

Titre abrégé

Bill 117

An Act to amend the Minors' Protection Act

Mr. Swart

1st Reading July 3rd, 1986
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The purpose of the Bill is to prohibit the sale of alcoholic beverages or foodstuffs to a child under eighteen years of age. At present, alcoholic beverages containing less than 1 per cent alcohol are able to be sold to minors.

The Bill also increases the maximum fine payable under the Act from \$50 to \$500.

Bill 117

1986

An Act to amend the Minors' Protection Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Minors' Protection Act*, being chapter 293 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

1a. No person shall either directly or indirectly sell or give or furnish to a child under eighteen years of age any beverage or foodstuff containing alcohol.

Low
alcohol
beverages

2. Section 2 of the said Act is amended by striking out "\$50" in the third line and inserting in lieu thereof "\$500".

3. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

4. The short title of this Act is the *Minors' Protection Amendment Act, 1986*.

Short title

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

CA20N
XB
-B 56

Bill 118

An Act to regulate the Advertising and Sale of Tobacco

Mr. Cooke
(Windsor-Riverside)

1st Reading July 7th, 1986

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill bans tobacco advertising, requires that tobacco sold to a consumer be labelled in the prescribed manner, and requires that persons who sell tobacco be licensed to do so. In addition to imposing fines for a contravention of the Act, the Bill would permit cancellation of the licence of a person who sells tobacco to a person under the age of sixteen years.

Bill 118

1986

**An Act to regulate the
Advertising and Sale of Tobacco**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“consumer” means any person who, in Ontario, purchases or receives delivery of tobacco for his or her own use or consumption or for the use or consumption by others at his or her expense;

“Minister” means the Minister designated by the Lieutenant Governor in Council to administer this Act;

“prescribed” means prescribed by the regulations;

“regulations” means the regulations made under this Act;

“tobacco” means tobacco in any form in which it is used or consumed, and includes snuff.

2. No person shall promote the use of tobacco or cause to be displayed in public view or distributed to the public, whether by printed, electronic or other means, any advertisement or notice promoting the use of tobacco.

Tobacco
advertising
banned

3. No person shall sell tobacco to a consumer unless the tobacco is sold in a package that has a conspicuous label containing the prescribed information concerning its composition and the prescribed warnings concerning its possible health effects.

Information
on sale

4.—(1) No person shall sell tobacco to a consumer unless the person has applied for, and the Minister has issued to the person, a licence to sell tobacco.

Licence
for sale

Cancellation
of licence

(2) The Minister may,

- (a) refuse to issue a licence to a person; or
- (b) suspend or cancel the licence of a person if the person or an employee of the person contravenes a provision of this Act or the regulations.

Idem

(3) The Minister shall cancel the licence of a person who sells tobacco to a person under sixteen years of age or who causes tobacco to be sold from a vending machine in a location where persons under sixteen years are permitted to attend without insuring in the prescribed manner that persons under sixteen years do not purchase tobacco from the vending machine.

Opportunity
to be heard

(4) The Minister shall not refuse to issue or suspend or cancel a licence under subsection (2) or (3) without allowing the person to appear before the Minister to show cause why the issuance of the licence should not be refused or why it should not be suspended or cancelled, as the case may be.

Offence

5. A person who contravenes section 2 or 3 or subsection 4 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$250 for a first offence or \$500 for any subsequent offence in the case of an individual and no more than \$10,000 in the case of a corporation.

Regulations

6. The Lieutenant Governor in Council may make regulations,

- (a) designating the Minister who shall administer this Act;
- (b) prescribing the fees payable for licences and providing forms for licences and for applications for licences and providing for their use;
- (c) prescribing the information to be included in applying for a licence;
- (d) providing conditions to be met for the issuance of a licence;
- (e) prescribing the conditions that persons selling tobacco from vending machines shall meet to insure that persons under sixteen years of age do not purchase tobacco from vending machines.

7. This Act comes into force on the day it receives Royal Assent. Commence-
ment

8. The short title of this Act is the *Tobacco Sale Regulation Act, 1986*. Short title

CA20N

XB

-B 56

Bill 119

An Act to amend the Liquor Control Act

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations

1st Reading July 9th, 1986

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

Subsection 4 (3) of the Act now reads as follows:

(3) Subject to the approval of the Lieutenant Governor in Council, the Board may employ such officers, inspectors and employees and retain such assistance as is considered necessary and may determine their salary, remuneration and terms and conditions of employment.

Bill 119

1986

An Act to amend the Liquor Control Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 4 (3) of the *Liquor Control Act*, being chapter 243 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(3) The Board may appoint such officers, inspectors and Staff employees and retain such assistance as is considered necessary and may, subject to the approval of the Lieutenant Governor in Council, establish job categories, salary ranges and conditions of employment.

2. This Act comes into force on the day it receives Royal Commence-
Assent. ment

3. The short title of this Act is the *Liquor Control Amend-* Short title
ment Act, 1986.

Bill 119

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 119

(Chapter 59
Statutes of Ontario, 1986)

An Act to amend the Liquor Control Act

The Hon. M. Kwinter
Minister of Consumer and Commercial Relations

<i>1st Reading</i>	July 9th, 1986
<i>2nd Reading</i>	November 18th, 1986
<i>3rd Reading</i>	November 27th, 1986
<i>Royal Assent</i>	November 27th, 1986



Bill 119

1986

An Act to amend the Liquor Control Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 4 (3) of the *Liquor Control Act*, being chapter 243 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(3) The Board may appoint such officers, inspectors and employees and retain such assistance as is considered necessary and may, subject to the approval of the Lieutenant Governor in Council, establish job categories, salary ranges and conditions of employment. Staff

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Liquor Control Amendment Act, 1986*. Short title

CA20N

XB

-B 56

Bill 120

An Act to amend the Liquor Licence Act

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations

1st Reading July 9th, 1986

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

SECTION 1. Subsection 2 (8) of the Act now reads as follows:

(8) Subject to the approval of the Lieutenant Governor in Council, the Board may appoint such officers, inspectors and employees and retain such assistance as is considered necessary and may determine their salary, remuneration and terms and conditions of employment.

SECTION 2. Section 58 of the Act states that, in a prosecution, a certificate or report on fluid analysis is conclusive evidence of the facts stated therein. By removing "conclusive", evidence rebutting the certificate or report would be permitted to be brought forward.

Bill 120

1986

An Act to amend the Liquor Licence Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 (8) of the *Liquor Licence Act*, being chapter 244 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(8) The Board may appoint such officers, inspectors and Staff employees and retain such assistance as is considered necessary and may, subject to the approval of the Lieutenant Governor in Council, establish job categories, salary ranges and conditions of employment.

2. Section 58 of the said Act is amended by striking out “conclusive” in the sixth line.

3. This Act comes into force on the day it receives Royal Commence- Assent. ment

4. The short title of this Act is the *Liquor Licence Short title Amendment Act, 1986.*

56
Bill 120

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 120

(Chapter 60
Statutes of Ontario, 1986)

An Act to amend the Liquor Licence Act

The Hon. M. Kwinter
Minister of Consumer and Commercial Relations



<i>1st Reading</i>	July 9th, 1986
<i>2nd Reading</i>	November 18th, 1986
<i>3rd Reading</i>	November 27th, 1986
<i>Royal Assent</i>	November 27th, 1986

Bill 120**1986****An Act to amend the Liquor Licence Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 (8) of the *Liquor Licence Act*, being chapter 244 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(8) The Board may appoint such officers, inspectors and Staff employees and retain such assistance as is considered necessary and may, subject to the approval of the Lieutenant Governor in Council, establish job categories, salary ranges and conditions of employment.

2. Section 58 of the said Act is amended by striking out “conclusive” in the sixth line.

3. This Act comes into force on the day it receives Royal Commence-
Assent. ment

4. The short title of this Act is the *Liquor Licence* Short title
Amendment Act, 1986.

CA20N
XB
-B 56

Bill 121

An Act to amend the Land Titles Act

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations

1st Reading July 9th, 1986
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTES

SECTION 1. The substituted definition of “land registrar” is complementary to the proposed re-enactment of subsection 8 (1) of the *Registry Act*. The proposed change to the definition of “regulations” is complementary to the proposed addition of section 97a of the *Registry Act*.

SECTION 2. The repeal is complementary to the proposed re-enactment of subsection 8 (1) of the *Registry Act* and to section 1 of this Bill.

SECTION 3. It is proposed that the Director of Titles be a public servant appointed by the Minister instead of a person appointed by the Lieutenant Governor in Council.

SECTION 4.—Subsection 1. The proposed amendment redefines the authority of the Director of Titles by removing responsibility for supervision, a function that is no longer appropriate.

Subsection 2. The subject-matter of the repealed subsection 10 (6) is to be added to the *Registry Act* in revised form.

Subsection 3. Most of the functions of land registrars relating to the first registration of land under the Act are currently assigned by regulation to the Director of Titles. Recent and proposed organizational changes make it more appropriate that most of these functions be assigned to the Director of Land Registration.

SECTION 5. The new section 10a is complementary to the proposed re-enactment of subsection 6 (1) of the *Registry Act* under which a person who is not a lawyer may be appointed as the Director of Land Registration. As a matter of expediency, section 10a and the complementary new section 6a of the *Registry Act* will allow for a re-distribution of functions between the Director of Titles and the Director of Land Registration, without having to amend each provision at this time.

SECTION 6. The repeal is complementary to the proposed re-enactment of section 10 of the *Registry Act* which will apply in cases of temporary absence or vacancy in the office of land registrar.

SECTION 7. The repealed provision requires the land registrar to take an oath of office. This provision will become redundant with the coming into force of the proposed re-enacted subsection 8 (1) of the *Registry Act*.

SECTION 8. Land registry offices are to be kept open except on “holidays”. The amendment is complementary to the proposed section 97a being added to the *Registry Act*. The explanation set out for section 9 of the *Registry Amendment Act, 1986* pertains to this proposed amendment.

SECTION 9. Section 36 of the Act is no longer appropriate because of administrative changes. Section 45 of the Act is currently inoperative because regulations made under clause 162 (1) (g) assigned most of the land registrars’ functions in respect of first registration to the Director of Titles, as contemplated by subsection 10 (8). That clause and subsection, as re-enacted, will allow for the transfer of the subject-matter of the repealed section 45 to the regulations, to the extent required. The repeal of section 46 is complementary to the repeal of section 45.

SECTION 10. The repeal of subsection 144 (5) of the Act is complementary to the proposed new section 73a of the *Registry Act*.

SECTION 11.—Subsection 1. This is complementary to the proposed new section 97a of the *Registry Act*.

Subsection 2. The amendment is complementary to the re-enactment of subsection 10 (8) and to the new section 10a.

Bill 121

1986

An Act to amend the Land Titles Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause 1 (b) of the *Land Titles Act*, being chapter 230 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (b) “land registrar” means a land registrar appointed under the *Registry Act*, in whose land titles division land affected or intended to be affected by any proceeding, instrument, application or plan is or may be registered or deposited.

R.S.O. 1980,
c. 445

(2) Clause 1 (i) of the said Act is amended by inserting after “97” in the second line “or 97a”.

2. Subsection 5 (1) of the said Act is repealed.

3. Subsection 9 (1) of the said Act is repealed and the following substituted therefor:

- (1) The Minister may appoint a public servant within the meaning of the *Public Service Act* who is a barrister and solicitor to be the Director of Titles.

Director
of Titles
R.S.O. 1980,
c. 418

4.—(1) Subsection 10 (1) of the said Act is repealed and the following substituted therefor:

- (1) The Director of Titles has the authority to determine any matter relating to titles of land to which this Act applies.

Authority of
Director
of Titles

(2) Subsection 10 (6) of the said Act is repealed.

(3) Subsection 10 (8) of the said Act is repealed and the following substituted therefor:

First registration

(8) The Director of Land Registration and the Director of Titles shall perform such functions relating to the first registration of land under this Act as are prescribed.

5. The said Act is amended by adding thereto the following section:

Transfer of functions to Director of Land Registration

10a.—(1) The Minister may make regulations transferring to the Director of Land Registration any function of the Director of Titles that is essentially of an administrative nature under any Act.

Where transfer not exclusive

(2) A transfer of a function in a regulation made under subsection (1) may, where it expressly so states, retain to the Director of Titles concurrent authority to perform the function transferred.

Statutory references

(3) A regulation made under subsection (1) shall identify each function to be transferred by citing the relevant statutory provision.

Deemed amendments

(4) Where a function has been transferred, the statutory provision cited and the related provisions of any regulation shall thereafter be read and construed as though “Director of Land Registration” had been substituted for “Director of Titles”.

Idem

(5) Where a function has been transferred and subsection (2) applies, the statutory provision cited and the related provisions of any regulation shall thereafter be read and construed as though “Director of Land Registration and Director of Titles” had been substituted for “Director of Titles”.

6. Subsection 12 (1) of the said Act is repealed.

7. Section 15 of the said Act is repealed.

8. Subsection 18 (1) of the said Act is amended by adding thereto the following clause:

(d) a day that is a holiday as prescribed under subsection 97a (4) of the *Registry Act*.

R.S.O. 1980,
c. 445

9. Sections 36, 45 and 46 of the said Act are repealed.

10. Subsection 144 (5) of the said Act is repealed.

11.—(1) Clause 162 (1) (d) of the said Act is repealed.

(2) Clause 162 (1) (g) of the said Act is amended by adding at the end thereof “or the Director of Land Registration”.

12. This Act comes into force on the day it receives Royal Assent. Commence-
ment

13. The short title of this Act is the *Land Titles Amendment Act, 1986*. Short title

QON
56

Bill 121

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 121

*(Chapter 61
Statutes of Ontario, 1986)*

An Act to amend the Land Titles Act

The Hon. M. Kwinter
Minister of Consumer and Commercial Relations

<i>1st Reading</i>	July 9th, 1986
<i>2nd Reading</i>	November 18th, 1986
<i>3rd Reading</i>	November 27th, 1986
<i>Royal Assent</i>	November 27th, 1986



Bill 121

1986

An Act to amend the Land Titles Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause 1 (b) of the *Land Titles Act*, being chapter 230 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (b) “land registrar” means a land registrar appointed under the *Registry Act*, in whose land titles division land affected or intended to be affected by any proceeding, instrument, application or plan is or may be registered or deposited.

R.S.O. 1980,
c. 445

(2) Clause 1 (i) of the said Act is amended by inserting after “97” in the second line “or 97a”.

2. Subsection 5 (1) of the said Act is repealed.

3. Subsection 9 (1) of the said Act is repealed and the following substituted therefor:

(1) The Minister may appoint a public servant within the meaning of the *Public Service Act* who is a barrister and solicitor to be the Director of Titles.

Director
of Titles
R.S.O. 1980,
c. 418

4.—(1) Subsection 10 (1) of the said Act is repealed and the following substituted therefor:

(1) The Director of Titles has the authority to determine any matter relating to titles of land to which this Act applies.

Authority of
Director
of Titles

(2) Subsection 10 (6) of the said Act is repealed.

(3) Subsection 10 (8) of the said Act is repealed and the following substituted therefor:

First
registration

(8) The Director of Land Registration and the Director of Titles shall perform such functions relating to the first registration of land under this Act as are prescribed.

5. The said Act is amended by adding thereto the following section:

Transfer of
functions to
Director of
Land
Registration

10a.—(1) The Minister may make regulations transferring to the Director of Land Registration any function of the Director of Titles that is essentially of an administrative nature under any Act.

Where
transfer not
exclusive

(2) A transfer of a function in a regulation made under subsection (1) may, where it expressly so states, retain to the Director of Titles concurrent authority to perform the function transferred.

Statutory
references

(3) A regulation made under subsection (1) shall identify each function to be transferred by citing the relevant statutory provision.

Deemed
amendments

(4) Where a function has been transferred, the statutory provision cited and the related provisions of any regulation shall thereafter be read and construed as though “Director of Land Registration” had been substituted for “Director of Titles”.

Idem

(5) Where a function has been transferred and subsection (2) applies, the statutory provision cited and the related provisions of any regulation shall thereafter be read and construed as though “Director of Land Registration and Director of Titles” had been substituted for “Director of Titles”.

6. Subsection 12 (1) of the said Act is repealed.

7. Section 15 of the said Act is repealed.

8. Subsection 18 (1) of the said Act is amended by adding thereto the following clause:

(d) a day that is a holiday as prescribed under subsection 97a (4) of the *Registry Act*.

R.S.O. 1980,
c. 445

9. Sections 36, 45 and 46 of the said Act are repealed.

10. Subsection 144 (5) of the said Act is repealed.

11.—(1) Clause 162 (1) (d) of the said Act is repealed.

(2) Clause 162 (1) (g) of the said Act is amended by adding at the end thereof “or the Director of Land Registration”.

12. This Act comes into force on the day it receives Royal Assent. Commence-
ment

13. The short title of this Act is the *Land Titles Amendment Act, 1986*. Short title

CA20N
XB
-B 56

Bill 122

An Act to amend the Registry Act

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations

1st Reading July 9th, 1986

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTES

The basic purpose of the Bill is to recognize recent and proposed administrative changes. Section 7 is the exception to this.

SECTION 1.—Subsection 1. Under the repealed provision, only a barrister and solicitor could be appointed as the Director of Land Registration. The requirement for professional standing is being removed in recognition of the fact that most of the Director's functions are of an administrative nature.

Subsection 2. The new subsection 6 (4) is a basic re-enactment of subsection 10 (6) of the *Land Titles Act* which is to be repealed and transfers the functions from the Director of Titles to the Director of Land Registration.

SECTION 2. The new section permits the Minister to transfer functions from the Director of Land Registration to the Director of Titles. The new section 6a is complementary to the proposed section 10a of the *Land Titles Act*.

SECTION 3. Under the provision being repealed, enacted in 1972, the Director of Titles is *ex officio* a Deputy Director of Land Registration. More recent changes in organizational structure within the Ministry of Consumer and Commercial Relations have made this provision inappropriate.

SECTION 4. The re-enactment of subsection 8 (1) of the Act will have the effect of bringing the land registrars, who are now Crown appointees, into the civil service.

SECTION 5. The recast provision updates the current section 10 of the Act and is complementary to the new subsection 8 (1) of the Act, as set out in section 4 of the Bill.

SECTION 6. Land registry offices are to be kept open except on "holidays". This amendment should be read in conjunction with section 9 of the Bill.

SECTION 7. The proposed new section 73a is a revised version of section 144 (5) of the *Land Titles Act* and is related to organizational changes in the Ministry. It will authorize Ministry staff to enter on private property for survey examination either before or after registration of the related plan and is similar to section 6 of the *Surveys Act*.

SECTION 8. This is complementary to the new section 97a of the Act as set out in section 9 of the Bill.

SECTION 9. The new section 97a authorizes the Director, instead of the Lieutenant Governor in Council, to establish business hours and to provide for variable hours. Power is given to the Director to prescribe holidays for specific land registry offices, primarily to cope with emergency situations. The term "holiday" is used to tie in with clause 27 (i) of the *Interpretation Act* and the expiration of notice periods rather than in the conventional sense.

Bill 122

1986

An Act to amend the Registry Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 6 (1) of the *Registry Act*, being chapter 445 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(1) The Minister may appoint a public servant within the meaning of the *Public Service Act* to be the Director of Land Registration.

Director of
Land
Registration
R.S.O. 1980,
c. 418

(2) Section 6 of the said Act is amended by adding thereto the following subsection:

(4) Any power or duty of a land registrar under this or any other Act may be exercised or performed by the Director of Land Registration or by a Deputy Director of Land Registration where, in the opinion of the Director or Deputy Director, having regard to the circumstances, such action is necessary or appropriate.

Authority of
Director to
perform
functions of
land
registrars

2. The said Act is amended by adding thereto the following section:

6a.—(1) The Minister may make regulations transferring any function of the Director of Land Registration under any Act to the Director of Titles.

Transfer of
functions to
Director
of Titles

(2) A transfer of a function in a regulation made under subsection (1) may, where it expressly so states, retain to the Director of Land Registration concurrent authority to perform the function transferred.

Where
transfer
not exclusive

(3) A regulation made under subsection (1) shall identify each function to be transferred by citing the relevant statutory provision.

Statutory
references

Deemed
amendments

(4) Where a function has been transferred, the statutory provision cited and the related provisions of any regulation shall thereafter be read and construed as though "Director of Titles" had been substituted for "Director of Land Registration".

Idem

(5) Where a function has been transferred and subsection (2) applies, the statutory provision cited and the related provisions of any regulation shall thereafter be read and construed as though "Director of Land Registration or Director of Titles" had been substituted for "Director of Land Registration".

3. Subsection 7 (4) of the said Act is repealed.

4. Subsection 8 (1) of the said Act is repealed and the following substituted therefor:

Land
registrars,
appoint-
ment under
R.S.O. 1980,
c. 418

(1) There shall be a land registrar appointed under the *Public Service Act* for every registry division and for every land titles division.

Idem

(1a) Every appointment under subsection (1) shall be for a specific division or divisions.

5. Sections 10, 11 and 12 of the said Act are repealed and the following substituted therefor:

Where office
of land
registrar
vacant

10.—(1) Where the office of land registrar for a registry division or land titles division is vacant,

- (a) the deputy land registrar for that division; or
- (b) if there is more than one deputy land registrar for that division, the senior deputy land registrar,

shall act as the land registrar.

Where land
registrar
temporarily
absent

(2) Where a land registrar is temporarily absent from the land registry office because of vacation, illness, other assignment or any other cause,

- (a) the deputy land registrar for the division; or
- (b) if there is more than one deputy land registrar for that division, the senior deputy land registrar,

shall exercise the powers and perform the duties of the land registrar while the land registrar is absent.

(3) Subsection (1) or (2) does not apply where the Director assigns, on a temporary basis, any person who is a public servant appointed under the *Public Service Act* to act as land registrar or to exercise the powers and perform the duties of the land registrar, as the case may be.

Temporary
assignment

R.S.O. 1980,
c. 418

6. Subsection 14 (1) of the said Act is amended by adding thereto the following clause:

- (d) a day that is a holiday as prescribed under subsection 97a (4).

7. The said Act is further amended by adding thereto the following section:

73a.—(1) The examiner of surveys, an assistant examiner of surveys or a person acting under the direction of either of them may, in order to carry out an examination of a plan of survey, for the purposes of this or any other Act, examine the survey on the ground.

Examination
of survey

(2) Any person referred to in subsection (1), while in the exercise of the powers conferred by subsection (1), may,

Right of
entry

- (a) at any time enter and pass over the land of any person; or
- (b) at a time suitable to the occupant of a building enter the building,

and do any act thereon or therein for any purpose of the examination.

(3) Every person who interferes with or obstructs the examiner of surveys, an assistant examiner of surveys or a person referred to in subsection (1) in the exercise of any of the powers conferred by subsection (1) or (2) is guilty of an offence.

Offence

8. Clause 96 (1) (d) of the said Act is repealed.

9. The said Act is further amended by adding thereto the following section:

97a.—(1) The Director may make regulations prescribing the hours during which land registry offices shall be kept open, the hours during which instruments shall be received for registration and setting out services to be provided before or after specified hours.

Regulations
by Director

- Idem (2) Notwithstanding subsection 14 (2), the Director may make regulations providing for the registration of instruments outside the prescribed hours and setting out conditions for such registration.
- Application (3) The application of any provision of a regulation made under subsection (1) or (2) may be limited to one or more land titles or registry divisions and to one or more days of the week or dates of a month.
- Extra-ordinary holidays
R.S.O. 1980, c. 230 (4) The Director may make regulations prescribing any day as a holiday for any specified land registry office for the purposes of section 14 of this Act and section 18 of the *Land Titles Act*.
- Commence-ment **10. This Act comes into force on the day it receives Royal Assent.**
- Short title **11. The short title of this Act is the *Registry Amendment Act, 1986*.**

Bill 122

An Act to amend the Registry Act

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations

1st Reading July 9th, 1986

2nd Reading November 18th, 1986

3rd Reading

Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The basic purpose of the Bill is to recognize recent and proposed administrative changes. Section 7 is the exception to this.

SECTION 1.—Subsection 1. Under the repealed provision, only a barrister and solicitor could be appointed as the Director of Land Registration. The requirement for professional standing is being removed in recognition of the fact that most of the Director's functions are of an administrative nature.

Subsection 2. The new subsection 6 (4) is a basic re-enactment of subsection 10 (6) of the *Land Titles Act* which is to be repealed and transfers the functions from the Director of Titles to the Director of Land Registration.

SECTION 2. The new section permits the Minister to transfer functions from the Director of Land Registration to the Director of Titles. The new section 6a is complementary to the proposed section 10a of the *Land Titles Act*.

SECTION 3. Under the provision being repealed, enacted in 1972, the Director of Titles is *ex officio* a Deputy Director of Land Registration. More recent changes in organizational structure within the Ministry of Consumer and Commercial Relations have made this provision inappropriate.

SECTION 4. The re-enactment of subsection 8 (1) of the Act will have the effect of bringing the land registrars, who are now Crown appointees, into the civil service.

SECTION 5. The recast provision updates the current section 10 of the Act and is complementary to the new subsection 8 (1) of the Act, as set out in section 4 of the Bill.

SECTION 6. Land registry offices are to be kept open except on "holidays". This amendment should be read in conjunction with section 9 of the Bill.

SECTION 7. The proposed new section 73a is a revised version of section 144 (5) of the *Land Titles Act* and is related to organizational changes in the Ministry. It will authorize Ministry staff to enter on private property for survey examination either before or after registration of the related plan and is similar to section 6 of the *Surveys Act*.

SECTION 8. This is complementary to the new section 97a of the Act as set out in section 9 of the Bill.

SECTION 9. The new section 97a authorizes the Director, instead of the Lieutenant Governor in Council, to establish business hours and to provide for variable hours. Power is given to the Director to prescribe holidays for specific land registry offices, primarily to cope with emergency situations. The term "holiday" is used to tie in with clause 27 (i) of the *Interpretation Act* and the expiration of notice periods rather than in the conventional sense.

Bill 122

1986

An Act to amend the Registry Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 6 (1) of the *Registry Act*, being chapter 445 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(1) The Minister may appoint a public servant within the meaning of the *Public Service Act* to be the Director of Land Registration.

Director of
Land
Registration
R.S.O. 1980,
c. 418

(2) Section 6 of the said Act is amended by adding thereto the following subsection:

(4) Any power or duty of a land registrar under this or any other Act may be exercised or performed by the Director of Land Registration or by a Deputy Director of Land Registration where, in the opinion of the Director or Deputy Director, having regard to the circumstances, such action is necessary or appropriate.

Authority of
Director to
perform
functions of
land
registrars

2. The said Act is amended by adding thereto the following section:

6a.—(1) The Minister may make regulations transferring any function of the Director of Land Registration under any Act to the Director of Titles.

Transfer of
functions to
Director
of Titles

(2) A transfer of a function in a regulation made under subsection (1) may, where it expressly so states, retain to the Director of Land Registration concurrent authority to perform the function transferred.

Where
transfer
not exclusive

(3) A regulation made under subsection (1) shall identify each function to be transferred by citing the relevant statutory provision.

Statutory
references

Deemed
amendments

(4) Where a function has been transferred, the statutory provision cited and the related provisions of any regulation shall thereafter be read and construed as though “Director of Titles” had been substituted for “Director of Land Registration”.

Idem

(5) Where a function has been transferred and subsection (2) applies, the statutory provision cited and the related provisions of any regulation shall thereafter be read and construed as though “Director of Land Registration or Director of Titles” had been substituted for “Director of Land Registration”.

3. Subsection 7 (4) of the said Act is repealed.

4. Subsection 8 (1) of the said Act is repealed and the following substituted therefor:

Land
registrars,
appoint-
ment under
R.S.O. 1980,
c. 418

(1) There shall be a land registrar appointed under the *Public Service Act* for every registry division and for every land titles division.

Idem

(1a) Every appointment under subsection (1) shall be for a specific division or divisions.

5. Sections 10, 11 and 12 of the said Act are repealed and the following substituted therefor:

Where office
of land
registrar
vacant

10.—(1) Where the office of land registrar for a registry division or land titles division is vacant,

- (a) the deputy land registrar for that division; or
- (b) if there is more than one deputy land registrar for that division, the senior deputy land registrar,

shall act as the land registrar.

Where land
registrar
temporarily
absent

(2) Where a land registrar is temporarily absent from the land registry office because of vacation, illness, other assignment or any other cause,

- (a) the deputy land registrar for the division; or
- (b) if there is more than one deputy land registrar for that division, the senior deputy land registrar,

shall exercise the powers and perform the duties of the land registrar while the land registrar is absent.

(3) Subsection (1) or (2) does not apply where the Director assigns, on a temporary basis, any person who is a public servant appointed under the *Public Service Act* to act as land registrar or to exercise the powers and perform the duties of the land registrar, as the case may be.

Temporary
assignment

R.S.O. 1980,
c. 418

6. Subsection 14 (1) of the said Act is amended by adding thereto the following clause:

- (d) a day that is a holiday as prescribed under subsection 97a (4).

7. The said Act is further amended by adding thereto the following section:

73a.—(1) The examiner of surveys, an assistant examiner of surveys or a person acting under the direction of either of them may, in order to carry out an examination of a plan of survey, for the purposes of this or any other Act, examine the survey on the ground.

Examination
of survey

(2) Any person referred to in subsection (1), while in the exercise of the powers conferred by subsection (1), may,

Right of
entry

- (a) at any time enter and pass over the land of any person; or
- (b) at a time suitable to the occupant of a building enter the building,

and do any act thereon or therein for any purpose of the examination.

(3) Every person who interferes with or obstructs the examiner of surveys, an assistant examiner of surveys or a person referred to in subsection (1) in the exercise of any of the powers conferred by subsection (1) or (2) is guilty of an offence.

Offence

8. Clause 96 (1) (d) of the said Act is repealed.

9. The said Act is further amended by adding thereto the following section:

97a.—(1) The Director may make regulations prescribing the hours during which land registry offices shall be kept open, the hours during which instruments shall be received for registration and setting out services to be provided before or after specified hours.

Regulations
by Director

- Idem (2) Notwithstanding subsection 14 (2) of this Act and sub-
R.S.O. 1980, section 18 (2) of the *Land Titles Act*, the Director may make
c. 230 regulations providing for the registration of instruments outside the prescribed hours and setting out conditions for such registration.
- Application (3) The application of any provision of a regulation made
under subsection (1) or (2) may be limited to one or more land titles or registry divisions and to one or more days of the week or dates of a month.
- Extra-ordinary holidays (4) The Director may make regulations prescribing any day
R.S.O. 1980, as a holiday for any specified land registry office for the pur-
c. 230 poses of section 14 of this Act and section 18 of the *Land Titles Act*.
- Commence-ment **10.** This Act comes into force on the day it receives Royal Assent.
- Short title **11.** The short title of this Act is the *Registry Amendment Act, 1986*.

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Bill 122

(Chapter 62
Statutes of Ontario, 1986)

An Act to amend the Registry Act

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations



<i>1st Reading</i>	July 9th, 1986
<i>2nd Reading</i>	November 18th, 1986
<i>3rd Reading</i>	November 27th, 1986
<i>Royal Assent</i>	November 27th, 1986

Bill 122

1986

An Act to amend the Registry Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 6 (1) of the *Registry Act*, being chapter 445 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(1) The Minister may appoint a public servant within the meaning of the *Public Service Act* to be the Director of Land Registration.

Director of
Land
Registration
R.S.O. 1980,
c. 418

(2) Section 6 of the said Act is amended by adding thereto the following subsection:

(4) Any power or duty of a land registrar under this or any other Act may be exercised or performed by the Director of Land Registration or by a Deputy Director of Land Registration where, in the opinion of the Director or Deputy Director, having regard to the circumstances, such action is necessary or appropriate.

Authority of
Director to
perform
functions of
land
registrars

2. The said Act is amended by adding thereto the following section:

6a.—(1) The Minister may make regulations transferring any function of the Director of Land Registration under any Act to the Director of Titles.

Transfer of
functions to
Director
of Titles

(2) A transfer of a function in a regulation made under subsection (1) may, where it expressly so states, retain to the Director of Land Registration concurrent authority to perform the function transferred.

Where
transfer
not exclusive

(3) A regulation made under subsection (1) shall identify each function to be transferred by citing the relevant statutory provision.

Statutory
references

Deemed
amendments

(4) Where a function has been transferred, the statutory provision cited and the related provisions of any regulation shall thereafter be read and construed as though "Director of Titles" had been substituted for "Director of Land Registration".

Idem

(5) Where a function has been transferred and subsection (2) applies, the statutory provision cited and the related provisions of any regulation shall thereafter be read and construed as though "Director of Land Registration or Director of Titles" had been substituted for "Director of Land Registration".

3. Subsection 7 (4) of the said Act is repealed.

4. Subsection 8 (1) of the said Act is repealed and the following substituted therefor:

Land
registrars,
appoint-
ment under
R.S.O. 1980,
c. 418

(1) There shall be a land registrar appointed under the *Public Service Act* for every registry division and for every land titles division.

Idem

(1a) Every appointment under subsection (1) shall be for a specific division or divisions.

5. Sections 10, 11 and 12 of the said Act are repealed and the following substituted therefor:

Where office
of land
registrar
vacant

10.—(1) Where the office of land registrar for a registry division or land titles division is vacant,

- (a) the deputy land registrar for that division; or
- (b) if there is more than one deputy land registrar for that division, the senior deputy land registrar,

shall act as the land registrar.

Where land
registrar
temporarily
absent

(2) Where a land registrar is temporarily absent from the land registry office because of vacation, illness, other assignment or any other cause,

- (a) the deputy land registrar for the division; or
- (b) if there is more than one deputy land registrar for that division, the senior deputy land registrar,

shall exercise the powers and perform the duties of the land registrar while the land registrar is absent.

(3) Subsection (1) or (2) does not apply where the Director assigns, on a temporary basis, any person who is a public servant appointed under the *Public Service Act* to act as land registrar or to exercise the powers and perform the duties of the land registrar, as the case may be.

Temporary
assignment

R.S.O. 1980,
c. 418

6. Subsection 14 (1) of the said Act is amended by adding thereto the following clause:

- (d) a day that is a holiday as prescribed under subsection 97a (4).

7. The said Act is further amended by adding thereto the following section:

73a.—(1) The examiner of surveys, an assistant examiner of surveys or a person acting under the direction of either of them may, in order to carry out an examination of a plan of survey, for the purposes of this or any other Act, examine the survey on the ground.

Examination
of survey

(2) Any person referred to in subsection (1), while in the exercise of the powers conferred by subsection (1), may,

Right of
entry

- (a) at any time enter and pass over the land of any person; or
- (b) at a time suitable to the occupant of a building enter the building,

and do any act thereon or therein for any purpose of the examination.

(3) Every person who interferes with or obstructs the examiner of surveys, an assistant examiner of surveys or a person referred to in subsection (1) in the exercise of any of the powers conferred by subsection (1) or (2) is guilty of an offence.

Offence

8. Clause 96 (1) (d) of the said Act is repealed.

9. The said Act is further amended by adding thereto the following section:

97a.—(1) The Director may make regulations prescribing the hours during which land registry offices shall be kept open, the hours during which instruments shall be received for registration and setting out services to be provided before or after specified hours.

Regulations
by Director

Idem

R.S.O. 1980,
c. 230

(2) Notwithstanding subsection 14 (2) of this Act and subsection 18 (2) of the *Land Titles Act*, the Director may make regulations providing for the registration of instruments outside the prescribed hours and setting out conditions for such registration.

Application

(3) The application of any provision of a regulation made under subsection (1) or (2) may be limited to one or more land titles or registry divisions and to one or more days of the week or dates of a month.

Extra-
ordinary
holidays

R.S.O. 1980,
c. 230

(4) The Director may make regulations prescribing any day as a holiday for any specified land registry office for the purposes of section 14 of this Act and section 18 of the *Land Titles Act*.

Commence-
ment

10. This Act comes into force on the day it receives Royal Assent.

Short title

11. The short title of this Act is the *Registry Amendment Act, 1986*.

CA20N
XB
-B 56

Bill 123

An Act to amend the Municipality of Metropolitan Toronto Act

The Hon. B. Grandmaître
Minister of Municipal Affairs

1st Reading July 9th, 1986
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The purpose of the Bill is to permit the Metropolitan Corporation to allow surplus water funds generated by water rates to be allocated in part to finance water pollution control projects of the Metropolitan Corporation or its area municipalities.

Bill 123

1986

**An Act to amend the
Municipality of Metropolitan Toronto Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 39 (1) (c) of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (c) the undertaking or financing of works under Part IV or of sewage works of the area municipalities;
- (d) the establishment of such reserve funds as the Metropolitan Council considers proper, to be used at any future time for any purpose mentioned in clause (a), (b) or (c) or for the stabilization of rates,

.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Municipality of Metropolitan Toronto Amendment Act, 1986*. Short title

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Bill 123

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 123

*(Chapter 50
Statutes of Ontario, 1986)*

An Act to amend the Municipality of Metropolitan Toronto Act

The Hon. B. Grandmaître
Minister of Municipal Affairs



<i>1st Reading</i>	July 9th, 1986
<i>2nd Reading</i>	November 13th, 1986
<i>3rd Reading</i>	November 18th, 1986
<i>Royal Assent</i>	November 18th, 1986

Bill 123

1986

**An Act to amend the
Municipality of Metropolitan Toronto Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 39 (1) (c) of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (c) the undertaking or financing of works under Part IV or of sewage works of the area municipalities;
- (d) the establishment of such reserve funds as the Metropolitan Council considers proper, to be used at any future time for any purpose mentioned in clause (a), (b) or (c) or for the stabilization of rates,

.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Municipality of Metropolitan Toronto Amendment Act, 1986*. Short title

CA20N
XB
-B 56

Bill 124

An Act to amend the Occupational Health and Safety Act

Mr. Sterling

1st Reading July 9th, 1986
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The Bill amends the *Occupational Health and Safety Act* to provide for the control of smoking in the work place.

Bill 124

1986

An Act to amend the Occupational Health and Safety Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Occupational Health and Safety Act*, being chapter 321 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following paragraphs:

25a. “smoking” means holding or having control over a lighted cigarette, cigar or pipe or any other lighted smoking equipment;

25b. “smoking area” means an area in which smoking is permitted.

2. The said Act is amended by adding thereto the following section:

15a.—(1) An employer shall ensure that no worker is unwillingly exposed to tobacco smoke in the work place at a level of concentration that constitutes a risk to health.

Duty of employers concerning smoking in the work place

(2) For the purpose of complying with subsection (1), an employer may prohibit smoking in any area of the work place.

Employer may prohibit smoking

(3) No person shall smoke in an area of the work place in which smoking is prohibited under subsection (2).

Offence

(4) Subject to subsection (1), an employer may designate a specific area or areas of the work place as a smoking area.

Designate smoking areas

(5) If an employer designates a smoking area under subsection (4), no person shall smoke in an area of the work place that is not so designated.

Offence

3. The said Act is further amended by adding thereto the following section:

Report of
worker where
exposed to
smoke

23a.—(1) If a worker is unwillingly exposed to tobacco smoke in the work place at a level of concentration that constitutes, in the opinion of the worker, a risk to health, the worker may make a report to that effect to the employer.

Employer to
investigate
report

(2) An employer who receives a report shall, within ten working days of receiving it, investigate the report and take the necessary steps, if any, to deal with the circumstances that caused the worker to make it.

Worker may
request
further
investigation

(3) If, following the investigation and any steps taken under subsection (2), the worker is not satisfied that the risk to health has been eliminated, the worker may request an investigation by an inspector.

Investigation
by inspector

(4) The inspector shall carry out an investigation within ten working days of receiving a request under subsection (3).

Decision of
inspector

(5) The inspector,

(a) shall decide, on the basis of the prescribed atmospheric conditions to which a worker may be exposed in the work place, whether the level of concentration of tobacco smoke to which the worker is exposed constitutes a risk to health; and

(b) shall order the employer to take the necessary steps, if any, to eliminate the risk.

Idem

(6) The inspector shall give his or her decision and order in writing, as soon as is practicable, to the employer and the worker.

Duty of
worker
pending
decision

(7) Pending the investigation and decision of the inspector,

(a) the worker shall perform his or her functions in an area of the work place, assigned by the employer, in which the worker is not exposed to tobacco smoke or in another area of the work place that is acceptable to the employer and the worker; or

(b) if there is no such area, the worker shall not be required to report for work.

4. This Act comes into force on the day it receives Royal Assent. Commence-
ment

5. The short title of this Act is the *Occupational Health and Safety Amendment Act, 1986*. Short title

Bill 125

An Act to establish the Women's Secretariat for Sport and Fitness

Ms Gigantes



1st Reading July 9th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Act establishes the Women's Secretariat for Sport and Fitness as an office in the Ministry of Tourism and Recreation for the purpose of improving access to sport and fitness programs for girls and women and increasing the opportunities for their participation in these programs.

Bill 125

1986

**An Act to establish the
Women's Secretariat for Sport and Fitness**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“Committee” means the Women in Sport and Fitness Advisory Committee established under subsection 7 (1);

“Minister” means the Minister of Tourism and Recreation;

“Ministry” means the Ministry of Tourism and Recreation;

“Secretariat” means the Women's Secretariat for Sport and Fitness established under section 3.

2. The Minister is responsible for the administration of this Act. Minister responsible

3. There shall be an office in the Ministry of Tourism and Recreation to be called the Women's Secretariat for Sport and Fitness. Secretariat established

4.—(1) The Secretariat shall be directed by a secretary to be appointed by the Lieutenant Governor in Council. Secretary

(2) The secretary shall report directly to the Minister. Idem

5. The objects of the Secretariat are, Objects of Secretariat

(a) to help girls and women obtain access to sport and fitness programs;

(b) to conduct research into the needs of girls and women with respect to sport and fitness;

- (c) to develop and implement policies and programs to eliminate inequalities in sport and fitness based on sex; and
- (d) to develop and implement affirmative action programs,
 - (i) to increase the number of qualified women appointed as coaches and directors of sport and fitness programs,
 - (ii) to expand the opportunities for participation by girls and women in sport and fitness programs, and
 - (iii) to ensure that greater financial and other resources are made available for sport and fitness programs for girls and women.

Duties

6. For the purpose of carrying out its objects, the Secretariat shall,

- (a) monitor and report on the effects of provincial and municipal policies and programs for improving sex equality in sport and fitness programs;
- (b) establish criteria for,
 - (i) appointments made by the Minister in respect of sport and fitness programs involving girls and women, and
 - (ii) eligibility for grants of financial assistance to municipalities and associations for sport and fitness programs;
- (c) review proposed appointments and grants to ensure that the criteria established under clause (b) are met;
- (d) promote participation by girls and women in sport and fitness programs by public education programs and other means; and
- (e) advocate the interests of girls and women, on an individual basis or otherwise, with respect to any matter related to sport and fitness programs.

Advisory
committee

7.—(1) There shall be a committee, to be known as the Women in Sport and Fitness Advisory Committee, composed

of fifteen representatives of women's advocacy groups, each of whom has experience related to sport and fitness.

(2) The members of the Committee shall be appointed by the Lieutenant Governor in Council to hold office for a term of two years. Term of office

(3) The members of the Committee shall appoint one member as chairman. Chairman

(4) If a vacancy occurs in the membership of the Committee, it shall be filled for the unexpired portion of the term. Vacancies

(5) Eight members of the Committee constitutes a quorum. Quorum

(6) The members of the Committee shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council. Remuneration and expenses

(7) The Committee shall make recommendations to the secretary to assist in carrying out the objects of the Secretariat and shall prepare and publish annually a summary of its recommendations. Purpose of Committee

8.—(1) The Secretariat shall make an annual report to the Minister on its affairs and the disposition of the Committee's recommendations. Annual report

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session. Idem

9. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

10. The short title of this Act is the *Women's Secretariat for Sport and Fitness Act, 1986*. Short title

CA20N
XB
-B 56

Bill 126

Tommy Douglas Day Act, 1986

Mr. Foulds



1st Reading July 9th, 1986
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of this Bill is to commemorate the banning of extra-billing in Ontario, by naming June 20th after the father of medicare in Canada, Tommy Douglas.

Bill 126**1986****Tommy Douglas Day Act, 1986**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The 20th day of June, in each year, being the anniversary of the day that Bill 94, the Act that ended extra-billing in Ontario, was proclaimed in the Province of Ontario shall, in the Province of Ontario be known as Tommy Douglas Day.

Proclamation
of Tommy
Douglas Day

2. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

3. The short title of this Act is the *Tommy Douglas Day Act, 1986*.

Short title

CA20N
XB
-B 56

Bill 127

An Act to revise the Surveyors Act

The Hon. V. Kerrio
Minister of Natural Resources



1st Reading July 10th, 1986
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The Bill revises the *Surveyors Act*. The main features of the Bill are:

1. The members of the Association of Ontario Land Surveyors will be composed of two groups. The first group will be those who are licensed under the Bill and the second group will be those who hold certificates of registration.
2. The Bill recognizes that professional land surveying is divided into the fields of cadastral surveying, photogrammetry, geodesy and hydrography.
3. A licence will be required to practise cadastral surveying (the conducting of surveys to establish, locate, define or describe lines, boundaries or corners of parcels of land).
4. A certificate of authorization will be required to provide to the public services that are part of the practice of cadastral surveying.
5. Persons who are qualified to practise professional land surveying in the fields of photogrammetry, geodesy and hydrography will be entitled to certificates of registration in the Association.
6. The establishment of the Registration Committee to hear matters related to licences, certificates of authorization and certificates of registration. However, determinations as to academic and experience requirements for licensing will be made by the Associations Committee on Academic and Experience Requirements.
7. The establishment of the Complaints Committee, to consider and investigate complaints regarding members of the Association (including holders of certificates of registration) and holders of certificates of authorization. The Complaints Committee will have power to refer matters to the Discipline Committee.
8. The establishment of the Discipline Committee, to hear and determine specific allegations of professional misconduct and incompetence, with power to impose a wide range of penalties and provision for appeal to the Divisional Court.
9. The establishment of the Fees Mediation Committee, to mediate complaints in respect of fees.
10. The establishment of the office of Complaints Review Councillor with power to examine the procedures for the treatment of complaints and to review the treatment of specific complaints.
11. The authority of the Council of the Association to make regulations will be subject to the approval of the Lieutenant Governor in Council and to prior review by the Minister. Notice and comment provisions are included in the regulation-making procedure. In addition, the Minister may advise the Council with respect to the implementation of the Act and the regulations. Where the Council does not comply with a request by the Minister, the Lieutenant Governor in Council will have authority to make, amend or revoke a regulation.

Bill 127

1986

An Act to revise the Surveyors Act

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Section

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49. Short title

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

"Association" means Association of Ontario Land Surveyors;

"by-laws" means by-laws made under this Act;

“certificate of authorization” means certificate of authorization issued under this Act to provide to the public services that are part of the practice of cadastral surveying;

“certificate of registration” means certificate of registration issued under this Act authorizing the holder to hold himself out as a member of the Association;

“Council” means Council of the Association;

“graphic representation” means a representation produced by an electrical, electronic, photographic or printing method and includes a representation produced on a video display terminal;

“licence” means licence issued under this Act to engage in the practice of cadastral surveying;

“licensed”, in relation to a person, means the person is the holder of a licence;

“Minister” means the Minister of Natural Resources or such other member of the Executive Council as is designated by the Lieutenant Governor in Council;

“practice of cadastral surveying” means advising on, reporting on, conducting or supervising the conducting of surveys to establish, locate, define or describe lines, boundaries or corners of parcels of land or land covered with water;

“practice of professional land surveying” means the determination of natural and man-made features of the surface of the earth and the storage and representation of such features on a chart, map, plan or graphic representation, and includes the practice of cadastral surveying;

“Registrar” means Registrar of the Association;

“regulations” means regulations made under this Act.

Association

2.—(1) The Association of Ontario Land Surveyors, a body corporate, is continued as a corporation without share capital.

Principal
object

(2) The principal object of the Association is to regulate the practice of professional land surveying and to govern its members and holders of certificates of authorization in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected.

(3) For the purpose of carrying out its principal object, the Association has the following additional objects: Additional
objects

1. To establish, maintain and develop standards of knowledge and skill among its members.
2. To establish, maintain and develop standards of qualification and practice for the practice of professional land surveying.
3. To establish, maintain and develop standards of professional ethics among its members.
4. To promote public awareness of the role of the Association.
5. To perform such other duties and exercise such other powers as are imposed or conferred on the Association by or under any Act.

3.—(1) The Council of the Association is continued and shall be the governing body and board of directors of the Association and shall manage and administer its affairs. Council

(2) The Council shall be composed of, Composition
of Council

- (a) six persons who are members of the Association and who are elected by the members of the Association as provided by the regulations;
- (b) the president and the vice-president, each of whom shall be elected annually by and from among the members of the Association as provided by the regulations;
- (c) the immediate past president;
- (d) the Surveyor General;
- (e) two persons who are not members of the governing body of a self-regulating licensing body under any other Act or licensed under this Act and who are appointed by the Lieutenant Governor in Council; and
- (f) one person who is not licensed under this Act and who is a barrister and solicitor of at least ten years standing in Ontario and who is appointed by the Lieutenant Governor in Council.

Term of appointed member	(3) A person appointed under clause (2) (e) or (f) shall be appointed for a term of not more than three years.
Reappointment	(4) A person appointed under clause (2) (e) or (f) may be reappointed for one or more terms of not more than three years each.
Remuneration of appointed member	(5) A person appointed under clause (2) (e) or (f) shall be paid, out of the moneys appropriated therefor by the Legislature, such expenses and remuneration as are determined by the Lieutenant Governor in Council.
Idem	(6) No person shall be elected or appointed to the Council unless he or she is a Canadian citizen.
Qualifications to vote	(7) Every member of the Association who is not in default of payment of the annual fee prescribed by the by-laws is qualified to vote at an election of members of the Council.
Registrar and staff	(8) The Council shall appoint during pleasure a Registrar and may appoint one or more deputy registrars who shall have the powers of the Registrar for the purposes of this Act, and may appoint such other persons as are from time to time necessary or desirable in the opinion of the Council to perform the work of the Association.
Quorum	(9) A majority of the members of the Council constitutes a quorum.
Vacancies	(10) Where one or more vacancies occur in the membership of the Council, the members remaining in office constitute the Council so long as their number is not fewer than a quorum.
Filling of vacancy	(11) A vacancy on the Council caused by the death, resignation, removal or incapacity to act of an elected member of the Council shall be filled by a member of the Association, <ul style="list-style-type: none">(a) where a quorum of the Council remains in office, appointed by the majority of the Council, and the member so appointed shall be deemed to be an elected member of the Council; or(b) where no quorum of the Council remains in office, elected in accordance with the regulations, and the member so appointed or elected shall hold office for the unexpired portion of the term of office of the member whose office he or she is elected or appointed to fill.
Meetings of Council	(12) The Council shall meet at least four times a year.

(13) The members of the Council of The Association of Ontario Land Surveyors who were elected or appointed and in office immediately before this Act comes into force shall continue in office and shall be deemed to be elected or appointed, as the case requires, under subsection (2) until the expiration of the term for which they were elected or appointed or until the office otherwise becomes vacant.

Continuation
of Council
members

4. The Association shall hold an annual meeting of the members of the Association not more than fifteen months after the holding of the last preceding annual meeting.

Annual
meetings

5.—(1) Every person licensed by the Association is a member of the Association, subject to any term, condition or limitation to which the licence is subject.

Membership

(2) Every person who is the holder of a certificate of registration is a member of the Association subject to any term, condition or limitation to which the certificate of registration is subject.

Idem

(3) A member may resign his or her membership by filing with the Registrar a resignation in writing, and the member's licence or certificate of registration is thereupon cancelled, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of his or her professional conduct while a member.

Resignation
of
membership

6. In addition to his or her other powers and duties under this Act, the Minister may,

Powers
of
Minister

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Act and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

7.—(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

Regulations

1. defining constituencies and prescribing the number of representatives on the Council of each constituency;

R.S.O. 1980,
c. 484

2. respecting and governing the qualifications, nomination, election and term or terms of office of the members to be elected to the Council, and controverted elections;
3. prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
4. respecting the composition of the committees required by this Act, other than the Complaints Committee and the Discipline Committee, the mechanism of the appointment of members of the committees and procedures ancillary to those specified in this Act in respect of any committee;
5. respecting matters of practice and procedure before committees required under this Act not inconsistent with this Act and the *Statutory Powers Procedure Act*;
6. prescribing the quorums of the committees required by this Act, except the Complaints Committee and the Discipline Committee;
7. prescribing classes of persons whose interests are related to those of the Association and the privileges of persons in the classes in relation to the Association;
8. respecting any matter ancillary to the provisions of this Act with regard to the issuing, suspension and revocation of licences, certificates of authorization and certificates of registration, and the requirements and qualifications therefor, including but not limited to regulations respecting,
 - i. the scope, standards and conduct of any examination set or approved by the Council as a licensing requirement or as a requirement for a certificate of registration,
 - ii. the curricula and standards of professional training programs offered by the Council,
 - iii. the academic, experience and other requirements for admission into professional training programs,

- iv. the academic and experience requirements for the issuance of a licence, and
 - v. the academic and experience requirements for the issuance of a certificate of registration;
- 9. prescribing terms and conditions of licences, certificates of authorization or certificates of registration;
- 10. prescribing forms of applications for licences, certificates of authorization and certificates of registration and requiring their use;
- 11. for the purposes of section 14, prescribing a proportion greater than 70 per cent of the shares of corporations that engage in the business of providing services that are within the practice of cadastral surveying;
- 12. requiring the making of returns of information in respect of the holdings of shares and the officers and directors of corporations that apply for or hold certificates of authorization, and prescribing and requiring the use of forms of such returns;
- 13. requiring and governing the signing and sealing of documents and drawings by members of the Association or by members entered on a specific register of the Association, specifying the forms of seals and respecting the issuance and ownership of seals;
- 14. requiring the making of returns of information by members of the Association and holders of certificates of authorization in respect of names, addresses, telephone numbers, associates, partners, employees, directors, officers and shareholdings, and, if the corporation engages in the practice of cadastral surveying, the name of the member of the Association who directs the practice of cadastral surveying by the corporation, and in respect of professional liability insurance, and prescribing and requiring the use of forms of such returns;
- 15. governing the use of names and designations in the practice of professional land surveying by members of the Association and holders of certificates of authorization;

16. providing for the maintenance and inspection of registers of persons permitted to engage in the practice of professional land surveying;
17. prescribing and governing standards of practice and performance standards for the practice of professional land surveying;
18. providing for the setting of schedules of suggested fees for the practice of professional land surveying and for the publication of the schedules;
19. respecting the advertising of the practice of professional land surveying;
20. prescribing a code of ethics;
21. defining professional misconduct for the purposes of this Act;
22. providing for the designation of members of the Association as specialists, prescribing the qualifications and requirements for designation as a specialist, providing for the suspension or revocation of such a designation and for the regulation and prohibition of the use of the designation by members of the Association;
23. providing for inspection programs related to the practice of professional land surveying, including programs for the inspection of records, other than financial records, of members of the Association and holders of certificates of authorization;
24. providing for the compilation of statistical data on the supply, distribution and professional activities of members of the Association and holders of certificates of authorization and on remuneration for the practice of professional land surveying and requiring members of the Association and holders of certificates of authorization to provide the information necessary to compile such statistics, but persons engaged in the administration of this Act shall maintain secret the names of persons providing the information as a matter that comes to their knowledge in the course of their duties under this Act;
25. requiring members of the Association or holders of certificates of authorization, or both of them, to obtain and to maintain insurance against liability

that may be incurred in the practice of professional land surveying, respecting the terms and conditions and prescribing the minimum amounts of such insurance, requiring such members and holders to provide to the Registrar proof of the insurance coverage, and respecting the form of the proof and the times when the proof shall be provided;

26. exempting any class of members or holders of certificates of authorization from the requirement to be insured in respect of professional liability, and classifying members or holders of certificates of authorization for the purpose of such exemption;
27. requiring members of the Association or holders of certificates of authorization, or both, to inform the Registrar in respect of claims or impending claims against them for professional liability;
28. prohibiting or regulating the practice of professional land surveying where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
29. providing for a program of continuing education of members of the Association;
30. respecting the duties and authority of the Registrar;
31. prescribing qualifications and requirements that shall be complied with to obtain the reinstatement of a licence, certificate of registration or a certificate of authorization that was cancelled by the Registrar;
32. classifying and exempting any class of holders of licences, certificates of registration or certificates of authorization from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable;
33. prescribing any matter referred to in this Act as prescribed by the regulations.

(2) The Council shall not request that the Lieutenant Governor in Council approve a regulation made by the Council until the regulation is confirmed by the members of the Association.

Confirmation
by members

Voting

(3) The members of the Association may confirm a regulation by a majority of those voting,

- (a) at an annual meeting;
- (b) at a general meeting of the Association called for the purpose; or
- (c) by means of a vote conducted by mail.

Distribution
of
regulations

(4) A copy of each regulation made under subsection (1),

- (a) shall be forwarded to each member of the Association and to each holder of a certificate of authorization; and
- (b) shall be available for public inspection in the office of the Association.

Regulations
by
Lieutenant
Governor in
Council

(5) Where the Minister requests in writing that the Council make, amend or revoke a regulation under subsection (1) and the Council has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request.

Idem,
distribution

(6) Where the Lieutenant Governor in Council makes, amends or revokes a regulation under subsection (5), the Minister shall transmit a copy of the regulation, amendment or revocation to the Council and the Council shall cause the regulation, amendment or revocation to be distributed and to be made available in the same manner as a regulation made under subsection (1).

By-laws

8.—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the Association not inconsistent with this Act and the regulations and, without limiting the generality of the foregoing,

- 1. prescribing the seal of the Association;
- 2. providing for the execution of documents by the Association;
- 3. respecting banking and finance;
- 4. fixing the financial year of the Association and providing for the audit of the accounts and transactions of the Association;

5. respecting the calling, holding and conducting of meetings of the Council and the duties of members of the Council;
6. providing for meetings of the Council and committees, except in a proceeding in respect of a licence or a certificate of authorization or a certificate of registration, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and a member of the Council or committee participating in a meeting in accordance with such by-law shall be deemed to be present in person at the meeting;
7. providing that the Council or a committee may act upon a resolution consented to by the signatures of all members of the Council or the committee except in a proceeding in respect of a licence or a certificate of authorization or a certificate of registration, and a resolution so consented to in accordance with such a by-law is as valid and effective as if passed at a meeting of the Council or the committee duly called, constituted and held for that purpose;
8. respecting the calling, holding and conducting of meetings of the membership of the Association;
9. prescribing the remuneration of the members of the Council and committees, other than persons appointed by the Lieutenant Governor in Council, and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
10. delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
11. prescribing the positions and qualifications of officers of the Association, providing procedures for their selection and the filling of vacancies in the offices of the Association, and prescribing the duties of officers of the Association;
12. providing for the appointment of inspectors for the purposes of this Act;
13. prescribing forms and providing for their use;

14. providing procedures for the making, amending and revoking of the by-laws;
15. respecting management of the property of the Association;
16. providing for the appointment, composition, powers and duties of additional or special committees;
17. respecting the application of the funds of the Association and the investment and reinvestment of any of its funds not immediately required, and for the safekeeping of its securities;
18. respecting the borrowing of money by the Association and the giving of security therefor;
19. respecting membership of the Association in other organizations, the payment of annual assessments and provision for representatives at meetings;
20. authorizing the making of grants for any purpose that may tend to advance knowledge of professional land surveying education, or maintain or improve the standards of practice in professional land surveying or support and encourage public information and interest in the role of professional land surveying in society;
21. respecting scholarships, bursaries and prizes related to the study of professional land surveying;
22. prescribing the amounts of and requiring the payment of annual fees by members of the Association and holders of certificates of authorization and by students and members of related classes recognized by the Association, and fees for licensing, certification, registration, examinations and continuing education, including penalties for late payment, fees in respect of the Association's quality control program for plans of survey and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
23. providing for the entering into of arrangements by the Association for its members and holders of certificates of authorization respecting indemnity for professional liability and requiring the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members of the

Association and holders of certificates of authorization in respect of professional liability;

24. respecting the Compensation Fund and prescribing the amount of the levy to be paid to the Association for the Fund and exempting any class of members from all or any part of such levy;
25. providing for the payment to the Association by any member of the cost of any investigation or audit of the member's books, records, accounts and transactions;
26. providing for the establishment of group insurance plans, other than for professional liability, in which members of the Association may participate on a voluntary basis;
27. regarding such other matters as are entailed in carrying on the business of the Association and are not included in section 7.

(2) A by-law passed by the Council is not effective until confirmed by the members of the Association. Confirmation
by members

(3) The members of the Association may confirm a by-law by a majority of those voting, Voting

- (a) at an annual meeting;
- (b) at a general meeting of the Association called for the purpose; or
- (c) by means of a vote conducted by mail.

(4) A copy of the by-laws made under subsection (1) and amendments thereto, Distribution
of by-laws

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each member; and
- (c) shall be available for public inspection in the office of the Association.

9.—(1) The Council shall establish and appoint as provided in this Act the following committees: Committees

- (a) Executive Committee;

- (b) Academic and Experience Requirements Committee;
- (c) Registration Committee;
- (d) Complaints Committee;
- (e) Discipline Committee;
- (f) Fees Mediation Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of a committee, the members remaining in office constitute the committee so long as their number is not fewer than a quorum of the committee.

Executive Committee

10.—(1) The Council may delegate to the Executive Committee the authority to exercise any power or perform any duty of the Council, other than to make, amend or revoke a regulation or a by-law.

Urgent matters

(2) Subject to ratification by the Council at its next ensuing meeting, the Executive Committee may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or a by-law.

Cadastral surveying, licence required

11.—(1) No person shall engage in the practice of cadastral surveying or hold himself or herself out as engaging in the practice of cadastral surveying unless licensed under this Act.

Certificate of authorization

(2) No person shall provide to a member of the public a service that is part of the practice of cadastral surveying except under and in accordance with a certificate of authorization.

Proof of practice

(3) For the purposes of subsections (1) and (2), proof of the performance of one act in the practice of cadastral surveying on one occasion is sufficient to establish engaging in the practice of cadastral surveying.

Certificate of registration

(4) No person shall hold himself or herself out as the holder of a certificate of registration unless such person is the holder of a certificate of registration issued under this Act.

Issuance of licence

12.—(1) The Registrar shall issue a licence to a natural person who applies therefor in accordance with the regulations and,

- (a) is a citizen of Canada or has the status of a permanent resident of Canada;
- (b) is not less than eighteen years of age;
- (c) has complied with the academic requirements specified in the regulations for the issuance of the licence and has passed such examinations as the Council has set or approved in accordance with the regulations or is exempted therefrom by the Council;
- (d) has complied with the experience requirements specified in the regulations for the issuance of the licence; and
- (e) is of good character.

(2) The Registrar may refuse to issue a licence to an applicant where the Registrar is of the opinion, upon reasonable and probable grounds, that the past conduct of the applicant affords grounds for belief that the applicant will not engage in the practice of cadastral surveying in accordance with the law and with honesty and integrity.

Grounds for
refusal
to issue
licence

(3) The Registrar, on his or her own initiative, may refer and on the request of an applicant shall refer the application of the applicant for the issuance of a licence to the Academic and Experience Requirements Committee for a determination as to whether or not the applicant has met the academic requirements or the experience requirements or both prescribed by the regulations for the issuance of the licence.

Referral to
Committee
on
Academic
and
Experience
Requirements

(4) The Committee may direct the Registrar to issue a licence subject to such conditions in respect of completion by the applicant of such academic requirements or experience requirements as are specified by the Committee.

Direction by
Committee

(5) A determination or direction by the Committee under subsection (3) or (4) is final and is binding on the Registrar and on the applicant.

Determi-
nation
by
Committee

(6) The Committee shall receive written submissions from an applicant but is not required to hold or to afford to any person a hearing or an opportunity to make oral submissions before making a determination under subsection (3).

Hearing

(7) The Registrar shall give notice to the applicant of a determination or direction by the Committee under subsection (3) or (4) and, if the applicant is rejected, the notice shall detail the specific requirements that the applicant must meet.

Notice of
determination
or direction

- Corporation **13.** A corporation that holds a certificate of authorization may provide services that are within the practice of cadastral surveying.
- Issuance of certificate of authorization **14.—**(1) The Registrar shall issue a certificate of authorization to a licensed member of the Association who applies therefor in accordance with the regulations and who meets the requirements and qualifications prescribed by the regulations for the issuance of the certificate of authorization.
- Issuance of certificate of authorization to corporation (2) The Registrar shall issue a certificate of authorization to a corporation that applies therefor in accordance with the regulations and meets the following requirements:
1. The primary function of the corporation must be to engage in the business of providing services that are within the practice of cadastral surveying.
 2. At least one director or full-time employee of the corporation must be a licensed member of the Association who holds a certificate of authorization and who agrees to personally supervise and direct the practice of cadastral surveying for the corporation.
 3. Not less than 70 per cent of each class of shares of the corporation must be owned by and registered in the name of one or more licensed members of the Association.
- Issuance of certificate of authorization (3) The Registrar shall issue a certificate of authorization to a partnership of licensed members of the Association that applies therefor in accordance with the regulations and that proposes to engage in the practice of cadastral surveying.
- Partnership of corporations (4) The Registrar shall issue a certificate of authorization to a partnership of corporations that applies therefor in accordance with the regulations.
- Past conduct (5) The Registrar may refuse to issue or may suspend or revoke a certificate of authorization where,
- (a) the Registrar is of the opinion, upon reasonable and probable grounds, that the past conduct of the applicant for or the holder of the certificate of authorization or the past conduct of a person who is in a position of authority or responsibility in the operation of the business of the applicant for or the holder of the certificate of authorization affords grounds for the belief that the applicant or holder will not engage in the business of providing services

that are within the practice of cadastral surveying in accordance with the law and with honesty and integrity; or

- (b) the holder of the certificate of authorization does not meet the requirements or the qualifications for the issuance of the certificate of authorization set out in the regulations; or
- (c) there is a breach of a condition of the certificate of authorization.

(6) The Registrar may refuse to issue a certificate of authorization to a licensed member of the Association or may revoke a certificate of authorization held by a licensed member of the Association where the Registrar is of the opinion, upon reasonable and probable grounds, that the member has not engaged in the practice of cadastral surveying during the period of five years preceding the date of the refusal or revocation.

Refusal or
revocation

15.—(1) A natural person, a partnership or a corporation that engages in the business of providing services that are within the practice of cadastral surveying under the authority of a certificate of authorization shall provide the services only under the personal supervision and direction of a licensed member of the Association.

Supervision
by Ontario
land surveyor

(2) A member of the Association who personally supervises and directs the providing of services within the practice of cadastral surveying by a holder of a certificate of authorization or who assumes responsibility for and supervises the practice of cadastral surveying related to the providing of services by a holder of a certificate of authorization is subject to the same standards of professional conduct and competence in respect of the services and the related practice of cadastral surveying as if the services were provided or the practice of cadastral surveying was engaged in by the member of the Association.

Professional
responsi-
bility of
supervising
Ontario land
surveyor

16.—(1) The Registrar shall issue a certificate of registration in a branch of professional land surveying to an applicant therefor who meets the requirements and qualifications prescribed by the regulations in relation to the branch.

Certificate
of
registration

(2) Subsection (1) applies in respect of professional land surveying in the branches of photogrammetry, geodesy and hydrography and such other branches as are prescribed by the regulations but does not apply in respect of cadastral surveying.

Idem

Hearing by
Registration
Committee

17.—(1) Where the Registrar proposes,

- (a) to refuse an application for a licence, a certificate of authorization or a certificate of registration;
- (b) to revoke a certificate of authorization; or
- (c) to issue a licence, a certificate of authorization or a certificate of registration subject to terms, conditions or limitations,

the Registrar shall serve notice of the proposal, together with written reasons therefor, on the applicant.

Exceptions

(2) Subsection (1) does not apply in respect of a refusal to issue a licence or a certificate of registration to a person who was previously licensed or who previously held a certificate of registration and whose licence or certificate of registration was suspended or revoked as a result of a decision of the Discipline Committee.

Idem

(3) Subsection (1) does not apply in respect of a refusal to issue a certificate of authorization to a person or a partnership that previously held a certificate of authorization and whose certificate of authorization was suspended or revoked as a result of a decision of the Discipline Committee.

Notice

(4) A notice under subsection (1) shall state that the applicant is entitled to a hearing by the Registration Committee if the applicant delivers, within thirty days after the notice under subsection (1) is served on the applicant, notice in writing requiring a hearing by the Registration Committee, and the applicant may so require such a hearing.

Power of
Registrar
where no
hearing

(5) Where the applicant does not require a hearing by the Registration Committee in accordance with subsection (4), the Registrar may carry out the proposal stated in the notice under subsection (1).

Hearing by
Registration
Committee

(6) Where an applicant requires a hearing by the Registration Committee in accordance with subsection (1), the Registration Committee shall appoint a time for, give notice of and shall hold the hearing.

Disability
of member

(7) Where the Registration Committee commences a hearing and a member of the Registration Committee becomes unable to act, the remaining members may complete the hearing notwithstanding the absence of the member who is unable to act.

(8) Where a proceeding is commenced before the Registration Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated other than for cause before the proceeding is disposed of but after evidence is heard, the member shall be deemed to remain a member of the Registration Committee for the purpose of completing the disposition of the proceeding in the same manner as if the term of office had not expired or been terminated.

Continuation
on expiry
of Committee
membership

(9) Following a hearing under this section in respect of a proposal by the Registrar in relation to a licence, the Registration Committee by order may,

Powers of
Registration
Committee
re licences

- (a) where the Committee is of the opinion upon reasonable grounds that the applicant meets the requirements and qualifications of this Act and the regulations and will engage in the practice of cadastral surveying with competence and integrity, direct the Registrar to issue a licence to the applicant;
- (b) where the Committee is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications of this Act and the regulations,
 - (i) direct the Registrar to refuse to issue a licence to the applicant, or
 - (ii) where the committee is of the opinion upon reasonable grounds that the applicant will engage in the practice of cadastral surveying with competence and integrity, exempt the applicant from any of the requirements and qualifications of this Act and the regulations and direct the Registrar to issue a licence; or
- (c) where the Committee is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the practice of cadastral surveying with competence and integrity,
 - (i) require the applicant to take and successfully complete such examinations as the Registration Committee may set or approve and to pay such fees therefor as the Registration Committee fixes,

- (ii) require the applicant to take such additional training as the Registration Committee specifies, or
- (iii) direct the Registrar to issue a licence subject to such terms, conditions and limitations as the Registration Committee specifies.

Powers of
Registration
Committee re
certificates
of
authorization

(10) Following a hearing under this section in respect of a proposal by the Registrar in relation to a certificate of authorization, the Registration Committee by order may,

- (a) where the Committee is of the opinion upon reasonable grounds that the applicant meets the requirements and qualifications of this Act and the regulations and will engage in the business of providing services that are within the practice of cadastral surveying with competence and integrity, direct the Registrar to issue a certificate of authorization to the applicant or to not revoke the certificate of authorization held by the applicant, as the case requires;
- (b) where the Committee is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications of this Act and the regulations,
 - (i) direct the Registrar to refuse to issue a certificate of authorization to the applicant or to revoke the certificate of authorization held by the applicant, or
 - (ii) where the Committee is of the opinion upon reasonable grounds that the applicant will engage in the business of providing services that are within the practice of cadastral surveying with competence and integrity, exempt the applicant from any of the requirements and qualifications of this Act and the regulations and direct the Registrar to issue a certificate of authorization to the applicant or to not revoke the certificate of authorization held by the applicant, as the case requires; or
 - (c) where the Committee is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the business of providing services that are within the practice of cadastral surveying with competence and integrity, direct

the Registrar to issue a certificate of authorization subject to such terms, conditions and limitations as the Registration Committee specifies.

(11) Following a hearing under this section in respect of a proposal by the Registrar in relation to a certificate of registration, the Registration Committee by order may,

Powers of
Registration
Committee re
certificates
of
registration

- (a) where the Committee is of the opinion upon reasonable grounds that the applicant meets the requirements and qualifications prescribed by the regulations, direct the Registrar to issue a certificate of registration to the applicant or to not revoke the certificate of registration held by the applicant, as the case requires;
- (b) where the Committee is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications prescribed by the regulations,
 - (i) direct the Registrar to refuse to issue a certificate of registration to the applicant or to revoke the certificate of registration held by the applicant, as the case requires, or
 - (ii) where the Committee is of the opinion upon reasonable grounds that the applicant will engage in the practice of professional surveying with competence and integrity, exempt the applicant from any of the requirements and qualifications prescribed by the regulations and direct the Registrar to issue a certificate of registration to the applicant or to not revoke the certificate of registration held by the applicant, as the case requires; or
- (c) where the Committee is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the practice of professional surveying with competence and integrity, direct the Registrar to issue a certificate of registration to the applicant subject to such terms, conditions and limitations as the Registration Committee specifies.

(12) The Registration Committee may extend the time for the giving of notice requiring a hearing by an applicant under this section before or after the expiration of such time where it is satisfied that there are apparent grounds for granting

Extension
of time for
requiring
hearing

relief to the applicant following upon a hearing and that there are reasonable grounds for applying for the extension, and the Registration Committee may give such directions as it considers proper consequent upon the extension.

Parties

(13) The Registrar and the applicant who has required the hearing are parties to proceedings before the Registration Committee under this section.

Opportunity
to show
compliance

(14) The applicant shall be given a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements in respect of the licence, the certificate of authorization or the certificate of registration, as the case requires.

Examination
of
documentary
evidence

(15) A party to proceedings under this section shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members
holding
hearing
not to have
taken part
in investi-
gation, etc.

(16) Members of the Registration Committee holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his or her representative except upon notice to and opportunity for both parties to participate, but the Registration Committee may seek legal advice from a person who is not counsel in the proceedings and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording
of evidence

(17) The oral evidence taken before the Registration Committee at a hearing shall be recorded and, if so required, copies of a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Only
members
at hearing
to participate
in decision

(18) No member of the Registration Committee shall participate in a decision of the Registration Committee following upon a hearing unless the member was present throughout the hearing and heard the evidence and argument of the parties.

Release of
documentary
evidence

(19) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person by the Registration Committee within a reasonable time after the matter in issue has been finally determined.

18.—(1) The Registrar shall maintain registers in which is entered every person who is a member of the Association and every holder of a certificate of authorization. Registers

(2) The Registrar shall note in the registers the terms, conditions and limitations attached to each licence, certificate of authorization and certificate of registration. Notation as to terms, conditions, limitations

(3) The Registrar shall note in the registers every revocation, suspension and cancellation or termination of a licence, certificate of authorization or certificate of registration. Notation as to revocation, suspension, etc.

(4) The Registrar shall note in the registers such other information as the Registration Committee or the Discipline Committee directs. Notation as to other information

(5) Any person has the right to inspect during normal business hours the registers maintained by the Registrar. Inspection

(6) The Registrar shall provide to any person, upon payment of a reasonable charge therefor, a copy of any part of the registers maintained by the Registrar. Copies

19.—(1) Every member of the Association under the *Surveyors Act*, being chapter 492 of the Revised Statutes of Ontario, 1980, immediately before this Act comes into force shall be deemed to be licensed in the same manner as if issued a licence under this Act. Continuation of memberships

(2) Every certificate of authorization issued under the said Act and in effect immediately before this Act comes into force continues in the same manner as if issued under this Act. Continuation of certificates of authorization

(3) Subsection (2) applies in the case of a corporation notwithstanding that the corporation does not comply with the requirement that not less than 70 per cent of each class of shares of the corporation must be owned by and registered in the name of one or more licensed members of the Association, if a majority of each class of shares of the corporation is owned by and registered in the name of one or more members of the Association. Idem, corporations

20.—(1) The Registrar may cancel a licence, a certificate of authorization or a certificate of registration for non-payment of any fee prescribed by the by-laws after giving the member or the holder of the certificate of authorization at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of his or her professional conduct while a member or holder. Cancellation for default of fees

Reinstatement

(2) A person who was a member or a holder of a certificate of authorization whose licence, certificate of authorization or certificate of registration was cancelled by the Registrar under subsection (1) is entitled to have the licence, certificate of authorization or certificate of registration reinstated upon compliance with the requirements and qualifications prescribed by the regulations.

Complaints Committee

21.—(1) The Complaints Committee shall be composed of,

- (a) at least one member of the Council who was elected to the Council;
- (b) at least one member of the Council who was appointed to the Council by the Lieutenant Governor in Council; and
- (c) such other members of the Association as may be appointed by the Council.

Idem

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

Chairman

(3) The Council shall name one member of the Complaints Committee to be chairman.

Quorum

(4) Three members of the Complaints Committee, of whom one shall be a person elected to the Council, constitute a quorum.

Duties of Complaints Committee

22.—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the Association regarding the conduct or actions of any member of the Association but no action shall be taken by the Committee under subsection (2) unless,

- (a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations the member may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it receives may, Idem

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee;
- (b) direct that the matter not be referred under clause (a); or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations or by-laws.

(3) The Committee shall give its decision in writing to the Registrar for the purposes of subsection (4) and, where the decision is made under clause (2) (b), its reasons therefor. Decision and reasons

(4) The Registrar shall send to the complainant and to the person complained against by prepaid first class mail a copy of the written decision made by the Complaints Committee and its reasons therefor, if any, together with notice advising the complainant of his or her right to apply to the Complaints Review Councillor under section 24. Notice

(5) The committee is not required to hold a hearing or to afford to any person an opportunity for a hearing or an opportunity to make oral submissions before making a decision or giving a direction under this section. Hearing

23.—(1) There shall be a Complaints Review Councillor who shall be appointed by and from among the members of the Council appointed by the Lieutenant Governor in Council. Complaints Review Councillor

(2) The Complaints Review Councillor is not eligible to be a member of the Complaints Committee or the Fees Mediation Committee. Idem

(3) The Complaints Review Councillor may examine from time to time the procedures for the treatment of complaints by the Association and, as mentioned in section 24, may review the treatment by the Association of individual complaints. Examination and review by Complaints Review Councillor

(4) In an examination or review in respect of the Association, the Complaints Review Councillor shall not inquire into the merits of any particular complaint made to the Association. Complaints Review Councillor not to inquire into merit of complaint

Discretionary
power of
Complaints
Review
Councillor

(5) The Complaints Review Councillor in his or her discretion may decide in a particular case not to make a review or not to continue a review in respect of the Association where,

- (a) the review is or would be in respect of the treatment of a complaint that was disposed of by the Association more than twelve months before the matter came to the attention of the Complaints Review Councillor; or
- (b) in the opinion of the Complaints Review Councillor,
 - (i) the application to the Complaints Review Councillor is frivolous or vexatious or is not made in good faith, or
 - (ii) the person who has made application to the Complaints Review Councillor has not a sufficient personal interest in the subject-matter of the particular complaint.

Notice

(6) Before commencing an examination or review in respect of the Association, the Complaints Review Councillor shall inform the Association of his or her intention to commence the examination or review.

Office
accommodation

(7) The Council shall provide to the Complaints Review Councillor such accommodation and support staff in the offices of the Association as are necessary to the performance of the powers and duties of the Complaints Review Councillor.

Privacy

(8) Every examination or review by the Complaints Review Councillor in respect of the Association shall be conducted in private.

Receipt
of
information

(9) In conducting an examination or review in respect of the Association, the Complaints Review Councillor may hear or obtain information from any person and may make such inquiries as the Complaints Review Councillor thinks fit.

Hearing
not
required

(10) The Complaints Review Councillor is not required to hold or to afford to any person an opportunity for a hearing in relation to an examination, review or report in respect of the Association.

Duty to
furnish
information

(11) Every person who is,

- (a) a member of the Council;

- (b) an officer of the Association;
- (c) a member of a committee of the Association; or
- (d) an employee of the Association,

shall furnish to the Complaints Review Councillor such information regarding any proceedings or procedures of the Association in respect of the treatment of complaints made to the Association as the Complaints Review Councillor from time to time requires, and shall give the Complaints Review Councillor access to all records, reports, files and other papers and things belonging to or under the control of the Association or any of such persons and that relate to the treatment by the Association of complaints or any particular complaint.

(12) The Complaints Review Councillor shall make a report following upon each examination or review by him or her in respect of the Association.

Report by
Complaints
Review
Councillor

(13) Where the report follows upon an examination of the treatment of complaints by the Association, the Complaints Review Councillor shall transmit the report to the Council.

Report
following
upon
examination

(14) Where the report follows upon a review as to the treatment of a complaint by the Association, the Complaints Review Councillor shall transmit the report to the Council, to the complainant and to the person complained against.

Report
following
upon
review

(15) The Complaints Review Councillor may transmit a report following upon an examination or review to the Minister where, in the opinion of the Complaints Review Councillor, the report should be brought to the attention of the Minister.

Report to
Minister

(16) The Complaints Review Councillor may include in a report following upon an examination or review his or her recommendations in respect of the procedures of the Association, either generally or with respect to the treatment of a particular complaint.

Recommendations

(17) The Council shall consider each report, and any recommendations included in the report, transmitted to it by the Complaints Review Councillor and shall notify the Complaints Review Councillor of any action it has taken in consequence.

Consideration
by Council

24.—(1) Where a complaint respecting a member of the Association or a holder of a certificate of authorization has not been disposed of by the Complaints Committee within ninety days after the complaint is filed with the Registrar,

Review by
Complaints
Review
Councillor

upon application by the complainant or on his or her own initiative, the Complaints Review Councillor may review the treatment of the complaint by the Complaints Committee.

Application
to
Complaints
Review
Councillor

(2) A complainant who is not satisfied with the handling by the Complaints Committee of his or her complaint to the Committee may apply to the Complaints Review Councillor for a review of the treatment of the complaint after the Committee has disposed of the complaint.

Discipline
Committee

25.—(1) The Discipline Committee shall be composed of,

- (a) the persons appointed to the Discipline Committee by the Council from among the members of the Council elected to the Council; and
- (b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council.

Quorum
and votes

(2) Three members of the Discipline Committee, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and all disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting.

Disability
of
member

(3) Where the Discipline Committee commences a hearing and a member of the Discipline Committee becomes unable to act, the remaining members may complete the hearing notwithstanding the absence of the member who is unable to act.

Chairman

(4) The Council shall name one member of the Discipline Committee who is a member of and elected to the Council to be chairman.

Reference
by Council
or Executive
Committee

(5) The Council, by resolution, may direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct or incompetence on the part of a member of the Association or a holder of a certificate of authorization specified in the resolution.

Duties of
Discipline
Committee

26.—(1) The Discipline Committee shall,

- (a) when so directed by the Council or the Complaints Committee, hear and determine allegations of professional misconduct or incompetence against a member of the Association;
- (b) hear and determine matters referred to it under section 22, 25 or 35; and

- (c) perform such other duties as are assigned to it by the Council.

(2) A member of the Association may be found guilty of professional misconduct by the Committee if, Professional misconduct

- (a) the member has been found guilty of an offence relevant to his or her suitability to practise, upon proof of such conviction;
- (b) the member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

(3) The Discipline Committee may find a member of the Association to be incompetent if in its opinion, Incompetence

- (a) the member has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public the member serves of a nature or to an extent that demonstrates the member is unfit to carry out the responsibilities of a person engaged in the practice of professional land surveying; or
- (b) the member or holder is suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that the member no longer be permitted to engage in the practice of professional land surveying or that his practice of professional land surveying be restricted or, in the case of a member other than a licensed member, that the membership of the member be revoked or be restricted.

(4) Where the Discipline Committee finds a member of the Association guilty of professional misconduct or incompetence it may, by order, Powers of Discipline Committee

- (a) revoke the licence or certificate of registration, as the case may be, of the member;
- (b) suspend the licence or certificate of registration, as the case may be, of the member for a stated period, not exceeding twenty-four months;
- (c) accept the undertaking of the member to limit the professional work of the member or holder in the practice of professional land surveying to the extent specified in the undertaking;

- (d) impose terms, conditions and limitations on the licence or certificate of registration, as the case may be, of the member, including but not limited, in the case of a member, to the successful completion of a particular course or courses of study, as are specified by the Discipline Committee;
- (e) impose specific restrictions on the licence or certificate of registration, as the case may be, or on the certificate of authorization, including but not limited to,
 - (i) requiring the member to engage in the practice of professional land surveying only under the personal supervision and direction of another member,
 - (ii) requiring the member to not alone engage in the practice of professional land surveying,
 - (iii) requiring the member to accept periodic inspections by the Discipline Committee or its delegate of the books, accounts, records and plans of the member in connection with the member's practice,
 - (iv) requiring the member to report to the Registrar or to such committee of the Council as the Discipline Committee may specify on such matters in respect of the member's practice for such period of time, at such times and in such form, as the Discipline Committee may specify;
- (f) require that the member be reprimanded, admonished or counselled and, if considered warranted, direct that the fact of the reprimand, admonishment or counselling be recorded on the register;
- (g) revoke or suspend for a stated period of time the designation of the member by the Association as a specialist in any branch of professional land surveying;
- (h) impose such fine as the Discipline Committee considers appropriate, to a maximum of \$5,000, to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;

- (i) require the member to repay, waive or reduce the fee charged by the member in respect of the practice of professional land surveying related to the finding of professional misconduct or incompetence;
- (j) subject to subsection (5), in respect of orders of revocation or suspension, direct that the finding and the order of the Discipline Committee be published in an official publication of the Association in detail or in summary and either with or without including the name of the member;
- (k) fix and impose costs to be paid by the member to the Association;
- (l) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms or for such purpose as may be specified by the Discipline Committee, including but not limited to,
 - (i) the successful completion by the member of a particular course or courses of study,
 - (ii) the production to the Discipline Committee of evidence satisfactory to it that any physical or mental handicap in respect of which the penalty was imposed has been overcome,

or any combination of them.

(5) The Discipline Committee shall cause an order of the Committee revoking or suspending a licence or certificate of registration to be published, with or without the reasons therefor, in an official publication of the Association together with the name of the holder of the revoked or suspended licence, certificate of authorization or certificate of registration.

Publication
of revocation
or suspension

(6) The Discipline Committee shall cause a determination by the Committee that an allegation of professional misconduct or incompetence was unfounded to be published in an official publication of the Association, upon the request of the member against whom the allegation was made.

Publication
on request

(7) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the Association reimburse the member for his or her costs or such portion thereof as the Discipline Committee fixes and the Association shall comply with the order.

Costs

Stay on
appeal for
incompetence

(8) Where the Discipline Committee revokes, suspends or restricts a licence or certificate of registration on the ground of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision unless the court to which the appeal is taken otherwise orders, and, where the court is satisfied that it is appropriate in the circumstances, the court may so order.

Stay on
appeal for
professional
misconduct

(9) Where the Discipline Committee revokes, suspends or restricts a licence or certificate of registration on a ground other than incompetence, the order does not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned, unless the Discipline Committee otherwise orders, and, where the Committee considers that it is appropriate for the protection of the public, the Committee may so order.

Service of
decision of
Discipline
Committee

(10) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member or holder.

Continuation
on expiry of
Committee
membership

(11) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated, other than for cause, before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if the term of office had not expired or been terminated.

Discipline
proceedings,
parties

27.—(1) In proceedings before the Discipline Committee, the Association and the member of the Association whose conduct is being investigated in the proceedings are parties to the proceedings.

Examination
of
documentary
evidence

(2) A member whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members
holding
hearing
not to have
taken part in
investigation,
etc.

(3) A member of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Council considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee, and shall not communicate directly or indirectly

in relation to the subject-matter of the hearing with any person or with any party or his or her representative except upon notice to and opportunity for all parties to participate, but the Discipline Committee may seek legal advice from a person who is not counsel in the proceedings and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

(4) Notwithstanding anything in the *Statutory Powers Procedure Act*, hearings of the Discipline Committee shall be held *in camera*, but, if the party whose conduct is being investigated requests otherwise by a notice delivered to the Registrar at least five days before the day fixed for the hearing, the Discipline Committee shall conduct the hearing in public except where,

In camera
R.S.O. 1980,
c. 484

- (a) matters involving public security may be disclosed; or
- (b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

(5) The oral evidence taken before the Discipline Committee shall be recorded and, if so required, copies of a transcript thereof shall be furnished only to the parties at their own cost.

Recording
of
evidence

(6) Notwithstanding section 15 of the *Statutory Powers Procedure Act*, nothing is admissible in evidence before the Discipline Committee that would be inadmissible in a court in a civil case and the findings of the Discipline Committee shall be based exclusively on evidence admitted before it.

Evidence
R.S.O. 1980,
c. 484

(7) No member of the Discipline Committee shall participate in a decision of the Committee following upon a hearing unless the member was present throughout the hearing and heard the evidence and argument of the parties.

Only
members
at hearing to
participate
in decision

(8) Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the party who produced them, be returned by the Committee within a reasonable time after the matter in issue has been finally determined.

Release of
documentary
evidence

28.—(1) A party to proceedings before the Registration Committee or the Discipline Committee may appeal to the Divisional Court, in accordance with the rules of court, from the decision or order of the committee.

Appeal
to court

Certified
copy of
record

(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of the fee therefor, the Registrar shall furnish the party with a certified copy of the record of the proceedings, including the documents received in evidence and the decision or order appealed from.

Powers of
court on
appeal

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the committee appealed from and may exercise all powers of the committee and may direct the committee to take any action which the committee may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the committee or the court may refer the matter back to the committee for rehearing in whole or in part, in accordance with such directions as the court considers proper.

Fees
Mediation
Committee

29.—(1) No person who is a member of the Complaints Committee or the Discipline Committee shall be a member of the Fees Mediation Committee.

Duties
of Fees
Mediation
Committee

(2) The Fees Mediation Committee,

- (a) shall, unless the committee considers it inappropriate to do so, mediate any written complaint by a client of a member of the Association or of a holder of a certificate of authorization in respect of a fee charged for services in the practice of professional land surveying provided to the client; and
- (b) shall perform such other duties as are assigned to it by the Council.

Arbitration
by Fees
Mediation
Committee

(3) The Fees Mediation Committee, with the written consent of all parties to the dispute, may arbitrate a dispute in respect of a fee between a client and a member of the Association or a holder of a certificate of authorization and in that case the decision of the Fees Mediation Committee is final and binding on all parties to the dispute.

Application
of
R.S.O. 1980,
c. 25

(4) Where the Fees Mediation Committee acts as arbitrator under subsection (3), the *Arbitrations Act* does not apply.

Enforcement

(5) A decision by the Fees Mediation Committee under subsection (3), exclusive of the reasons therefor, certified by the Registrar, may be filed with the Supreme Court or a county or district court and when filed the decision may be enforced in the same manner as a judgment of the court.

30.—(1) Where the Registrar believes on reasonable and probable grounds that a member of the Association has committed an act of professional misconduct or incompetence or that there is cause to refuse to issue or to suspend or revoke a certificate of authorization, the Registrar by order may appoint one or more persons to make an investigation to ascertain whether such act has occurred or there is such cause, and the person or persons appointed shall report the result of the investigation to the Registrar.

Registrar's
investigation

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member or holder of the certificate of authorization in respect of whom the investigation is being made and may, upon production of his or her appointment, enter at any reasonable time the business premises of the member or holder and examine books, records, documents and things relevant to the subject-matter of the investigation and, for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

Powers of
investigator

R.S.O. 1980,
c. 411

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or her or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Obstruction
of
investigator

(4) Where a provincial judge is satisfied on evidence upon oath,

Order by
provincial
judge

- (a) that the Registrar had grounds for appointing and by order has appointed one or more persons to make an investigation; and
- (b) that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the member of the Association or holder of a certificate of authorization whose affairs are being investigated and to the subject-matter of the investigation,

the provincial judge may issue an order authorizing the person or persons making the investigation, together with such police officer or officers as they call upon to assist them, to enter and search, by force, if necessary, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them.

Execution
of order

(5) An order issued under subsection (4) shall be executed at reasonable times as specified in the order.

Expiry
of order

(6) An order issued under subsection (4) shall state the date on which it expires, which shall be a date not later than fifteen days after the order is issued.

Ex parte
application

(7) A provincial judge may receive and consider an application for an order under subsection (4) without notice to and in the absence of the member of the Association or holder of a certificate of authorization whose affairs are being investigated.

Removal of
books, etc.

(8) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under this section relating to the member or holder whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member or holder whose practice is being investigated.

Admissibility
of copies

(9) Any copy made as provided in subsection (8) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as proof in the absence of evidence to the contrary of the original book, record or document and its contents.

Report of
Registrar

(10) The Registrar shall report the results of the investigation to the Council or such committee as the Registrar considers appropriate.

Information
re insurance
claims,
definition

31.—(1) In this section, “insurer” means a person offering insurance in respect of liability incurred in the practice of professional land surveying.

Information

(2) Upon the request of the Registrar, an insurer shall furnish to the Registrar any information that is in the possession of the insurer and that is specified in the request related to a claim or claims for indemnity in respect of the practice of professional land surveying.

Exception

(3) Subsection (2) does not apply in respect of a document prepared by an insured person relating to a claim for indemnity in respect of the practice of professional land surveying by the insured person.

(4) The Registrar may forward any information referred to in subsection (2) to such committee as he considers appropriate. Transmittal of information

32.—(1) No member of the Association or holder of a certificate of authorization shall engage in the practice of professional land surveying unless insured against professional liability in accordance with the regulations or in accordance with arrangements under subsection (2). Professional liability insurance

(2) The Association may make arrangements respecting insurance against professional liability for members of the Association and holders of certificates of authorization. Arrangements by Association

(3) Arrangements under subsection (2) may include arrangements respecting the payment and remission of premiums. Premiums

(4) The Association may prescribe levies that shall be paid by members of the Association and holders of certificates of authorization related to arrangements under subsection (2). Levies

33.—(1) The Association shall continue to maintain the fund known as the “Compensation Fund” and shall continue to hold it in trust for the purposes of this section. Compensation Fund

(2) The Compensation Fund shall be made up of, Composition of Fund

(a) all moneys paid by members of the Association under subsection (3);

(b) all moneys earned from the investment of moneys in the Fund;

(c) all moneys recovered under subsection (7); and

(d) all moneys contributed by any person.

(3) Every member, other than those of a class exempted by the by-laws, shall pay to the Association for the Compensation Fund such sum as is prescribed from time to time by the by-laws. Compensation Fund levy

(4) The Council may insure with any insurer licensed to carry on business in Ontario for such purposes and on such terms as the Council considers expedient in relation to the Compensation Fund, and, in such event, the moneys in the Fund may be used for the payment of premiums. Insurance

Grants

(5) The Council in its absolute discretion may make grants from the Compensation Fund in order to relieve or mitigate loss sustained by any person in consequence of dishonesty or incompetence in the practice of professional land surveying on the part of any member notwithstanding that after the commission of the act of dishonesty or incompetence the member may have died or ceased to administer his or her affairs or to be a member.

Conditions of grants

(6) No grant shall be made out of the Compensation Fund unless notice in writing of the loss is received by the Registrar within six months after the loss came to the knowledge of the person suffering the loss or within such further time, not exceeding eighteen months, as in any case may be allowed by the Council.

Subrogation

(7) If a grant is made under this section, the Association is subrogated to the amount of the grant to any rights or remedies to which the person receiving the grant was entitled on account of the loss in respect of which the grant was made against the member or any other person, or, in the event of the death or insolvency or other disability of the member or other person, against his or her personal representative or other person administering his or her estate.

Grantees' rights conditionally limited

(8) A person to whom a grant is made under this section, or, in the event of the person's death or insolvency or other disability, the personal representative or other person administering his or her estate, has no right to receive anything from the member or the member's estate in respect of the loss in respect of which the grant was made until the Association has been reimbursed the full amount of the grant.

Reimbursement from bankrupt's estate

(9) Where a grant has been made under this section and the member has been declared a bankrupt, the Association is entitled to prove against the bankrupt's estate for the full amount of the claim of the person to whom the grant was made and to receive all dividends on such amount until the Association has been reimbursed the full amount of the grant.

Delegation of powers to committee or referee or both

(10) The Council may delegate any of the powers conferred upon it by this section to a committee of the Council and, whether or not the Council has made any such delegation, it may appoint any member as a referee and delegate to the member any of the powers conferred upon it by this section that are not delegated to a committee.

Reports

(11) Where the Council has delegated any of its powers under this section to a committee or to a referee, the commit-

tee or referee, as the case may be, shall report as required to the Council.

(12) There may be paid out of the Compensation Fund the costs of its administration, including the costs of investigations and hearings and all other costs, salaries and expenses necessarily incidental to the administration of the Fund.

Costs of administration

(13) Surplus moneys in the Compensation Fund may be applied for such other purposes as are specified by the Council and approved by the Lieutenant Governor in Council.

Other purposes

34. Where a licence, certificate of authorization or certificate of registration is revoked or cancelled, the former holder thereof shall forthwith deliver the licence or certificate and related seal to the Registrar.

Surrender of cancelled licence, etc.

35.—(1) A person whose licence, certificate of authorization or certificate of registration has been revoked for cause under this Act, or whose membership has been cancelled for cause under a predecessor of this Act, may apply in writing to the Registrar for the issuance of a licence, certificate of authorization or certificate of registration, but such application shall not be made sooner than two years after the revocation or cancellation.

Restoration of licence, etc.

(2) The Registrar shall refer the application to the Discipline Committee which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the applicant.

Reference to Discipline Committee

(3) The provisions of this Act applying to hearings by the Registration Committee, except section 28, apply with necessary modifications to proceedings of the Discipline Committee under this section.

Procedures

(4) Notwithstanding subsections (1), (2) and (3), the Council may direct at any time that a licence, certificate of authorization or certificate of registration be issued to a person whose licence, certificate of authorization or certificate of registration has previously been revoked for cause or suspended for cause or that a suspension or cancellation for cause under a predecessor of this Act be removed, subject to such terms, conditions and limitations as the Council considers appropriate.

Direction by Council to issue licence

36.—(1) Every person engaged in the administration of this Act, including any person making a review or investigation under section 24 or 30, shall preserve secrecy with respect to all matters that come to the person's knowledge in the

Confidentiality

course of the person's duties, employment, inquiry or investigation and shall not communicate any such matter to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceedings under this Act or the regulations;
- (b) that the person may communicate any such matter to his or her counsel; or
- (c) with the consent of the person to whom the information relates.

Testimony
in civil
action

(2) No person to whom subsection (1) applies shall be required to give testimony or to produce any book, record, document or thing in any action or proceeding with regard to information obtained in the course of his or her duties, employment, inquiry or investigation except in a proceeding under this Act or the regulations.

Use of
"O.L.S." by
corporation

37.—(1) A corporation whose name includes the title "Ontario land surveyor" or the initials "O.L.S." and that ceases to hold a subsisting certificate of authorization shall not carry on or engage in any business until the title "Ontario land surveyor" or the initials "O.L.S." are removed from the name of the corporation.

Exception

(2) Subsection (1) does not apply to prevent a corporation from carrying on an activity necessary to the winding up of the corporation.

Proceedings
to prohibit
continuation
or repetition
of contra-
vention

38. Where any provision of this Act or the regulations is contravened, notwithstanding any other remedy or any penalty imposed, the Association may apply to a judge of the Supreme Court for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified in the order that, in the opinion of the court, will result or will likely result in the continuation or repetition of the contravention by the person committing the contravention, and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Supreme Court.

Penalties

39.—(1) Every person who contravenes section 11 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$15,000 and for each subsequent offence to a fine of not more than \$30,000.

(2) Every person who is not a member of the Association and who uses the title “Ontario land surveyor” or the initials “O.L.S.” as an occupational designation is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$5,000 and for each subsequent offence to a fine of not more than \$15,000. Idem

(3) Every person who obstructs a person appointed to make an investigation under section 30 in the course of his or her duties is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. Idem

(4) Every corporation that contravenes section 37 is guilty of an offence and on conviction is liable for a first offence to a fine of not more than \$5,000 and for each subsequent offence to a fine of not more than \$15,000. Idem

(5) Where a corporation is guilty of an offence under subsection (1), (2), (3) or (4), every director or officer of the corporation who authorizes, permits or acquiesces in the offence is guilty of an offence and on conviction is liable to a fine of not more than \$30,000. Idem,
director or
officer of
corporation

(6) Proceedings shall not be commenced in respect of an offence under subsection (1), (2), (3), (4) or (5) after two years after the date on which the offence was, or is alleged to have been, committed. Limitation

40.—(1) Any person who makes or causes to be made any wilful falsification in any matter relating to a register or issues a false licence, certificate of authorization or certificate of registration or a false document with respect to a register maintained by the Registrar under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. Falsification
of
certificate

(2) Any person who wilfully procures or attempts to procure himself or herself to be licensed or to be issued a certificate of authorization or a certificate of registration under this Act by knowingly making any false representation or declaration or by making a fraudulent representation or declaration, either orally or in writing, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. Offences
for false
representation

(3) Every person knowingly aiding and assisting in the commission of an offence under subsection (2) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. Aiding and
assisting

Limitation
period

(4) Proceedings to obtain a conviction for an offence under subsection (1) shall not be commenced after the expiration of six months after the date on which the offence was, or is alleged to have been, committed.

Onus of
proof

41. Where licensing or the holding of a certificate of authorization under this Act is required to permit the lawful doing of any act or thing, if in any prosecution it is proven that the defendant has done such act or thing, the burden of proving that the defendant was so licensed or that the defendant held a subsisting certificate of authorization under this Act rests upon the defendant.

Service
of notice

42. A notice or document required by this Act to be served or delivered may be served or delivered personally or by prepaid first class mail addressed to the person to whom notice is to be given at the person's last known address and, where notice is served or delivered by mail, the service or delivery shall be deemed to have been made on the tenth day after the day of mailing unless the person to whom notice is given establishes that the person, acting in good faith, through absence, accident, illness or other cause beyond the person's control, did not receive the notice, or did not receive the notice until a later date.

Registrar's
certificate
as evidence

43. Any statement containing information from the records required to be kept by the Registrar under this Act, purporting to be certified by the Registrar under the seal of the Association, is admissible in evidence in all courts as proof in the absence of evidence to the contrary of the facts stated therein without proof of the appointment or signature of the Registrar and without proof of the seal.

Immunity

44.—(1) No action or other proceeding for damages shall be instituted against the Association, a committee of the Association or a member of the Association or committee, or an officer, employee, agent or appointee of the Association for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Councillor
indemnified
in suits
respecting
execution of
office

(2) Every member of the Council and every officer, member or employee of the Association, and his or her heirs, executors and administrators, and estate and effects, respectively, may, with the consent of the Association, given at any meeting of the members of the Association, from time to time and at all times, be indemnified and saved harmless out of the funds of the Association, from and against,

- (a) all costs, charges and expenses whatsoever that he or she sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him or her, in or about the execution of the duties of his or her office, employment or appointment; and
- (b) all other costs, charges and expenses that he or she sustains or incurs in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by his or her own wilful neglect or default.

45.—(1) The Council shall make a report annually to the Minister containing such information as the Minister requires. Annual report

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. Idem

46.—(1) The *Corporations Act* does not apply in respect of the Association except for the following sections of that Act which shall apply with necessary modifications in respect of the Association: Application of
R.S.O. 1980,
c. 95

1. Section 81 (liability for wages).
2. Section 94 (auditors) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.
3. Subsection 95 (1) (auditor's qualifications) and, for the purpose, the subsection shall be deemed not to include,
 - i. the exception as provided in subsection 95 (2), and
 - ii. the reference to an affiliated company.
4. Section 96 (auditor's functions).
5. Subsection 97 (1), exclusive of clause 97 (1) (b), (auditor's report) and, for the purpose, the Association shall be deemed to be a private company.
6. Subsection 97 (3) (auditor's report).

7. Section 122 (liability of members).
8. Section 276 (holding of land) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.
9. Section 280 (making contracts).
10. Section 281 (power of attorney).
11. Section 282 (authentication of documents) except in respect of information from the records required to be kept by the Registrar.
12. Section 292 (validity of acts of directors).
13. Section 297 (directions by a court as to holding a meeting).
14. Section 299 (minutes of meetings).
15. Section 302 (books of account).
16. Section 303 (untrue entries) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.
17. Section 304 (place of keeping and the inspection of records) and, for the purpose,
 - i. the section shall be deemed not to refer to sections 41 and 43 of that Act, and
 - ii. the Minister shall be deemed to be the Minister referred to in the section.
18. Section 305 (inspection of records) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.
19. Section 310 (investigations and audits).
20. Section 323 (evidence of by-laws and certificates of amounts due).
21. Section 329 (removal of proceedings into the Supreme Court).
22. Section 330 (appeals).

23. Section 331 (untrue statements) and, for the purpose,

i. the section shall be deemed not to refer to regulations made under that Act, and

ii. the Minister and the Deputy Minister to the Minister shall be deemed to be the Minister and the Deputy Minister referred to in the section.

24. Section 333 (orders by the court) and, for the purpose, the section shall be deemed not to refer to creditors.

(2) For the purposes of subsection (1), a member of the Association shall be deemed to be a shareholder. Interpretation

47.—(1) The *Surveyors Act*, being chapter 492 of the Revised Statutes of Ontario, 1980, is repealed. Repeal

(2) Section 8 of the *Mobility Rights Statute Law Amendment Act, 1985*, being chapter 5, is repealed. Idem

(3) A reference in any Act or regulation to a surveyor or an Ontario land surveyor registered under the *Surveyors Act* shall be deemed to be a reference to a member of the Association licensed to engage in the practice of cadastral surveying. References
R.S.O. 1980,
c. 492

(4) A reference in any Act or regulation to the *Surveyors Act* shall be deemed to be a reference to this Act. Idem

48. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

49. The short title of this Act is the *Surveyors Act, 1986*. Short title

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1987

Bill 127

An Act to revise the Surveyors Act

The Hon. V. Kerrio
Minister of Natural Resources



<i>1st Reading</i>	July 10th, 1986
<i>2nd Reading</i>	February 3rd, 1987
<i>3rd Reading</i>	
<i>Royal Assent</i>	

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The Bill revises the *Surveyors Act*. The main features of the Bill are:

1. The members of the Association of Ontario Land Surveyors will be composed of two groups. The first group will be those who are licensed under the Bill and the second group will be those who hold certificates of registration.
2. The Bill recognizes that professional land surveying is divided into the fields of cadastral surveying, photogrammetry, geodesy and hydrography.
3. A licence will be required to practise cadastral surveying (the conducting of surveys to establish, locate, define or describe lines, boundaries or corners of parcels of land).
4. A certificate of authorization will be required to provide to the public services that are part of the practice of cadastral surveying.
5. Persons who are qualified to practise professional land surveying in the fields of photogrammetry, geodesy and hydrography will be entitled to certificates of registration in the Association.
6. The establishment of the Registration Committee to hear matters related to licences, certificates of authorization and certificates of registration. However, determinations as to academic and experience requirements for licensing will be made by the Associations Committee on Academic and Experience Requirements.
7. The establishment of the Complaints Committee, to consider and investigate complaints regarding members of the Association (including holders of certificates of registration) and holders of certificates of authorization. The Complaints Committee will have power to refer matters to the Discipline Committee.
8. The establishment of the Discipline Committee, to hear and determine specific allegations of professional misconduct and incompetence, with power to impose a wide range of penalties and provision for appeal to the Divisional Court.
9. The establishment of the Fees Mediation Committee, to mediate complaints in respect of fees.
10. The establishment of the office of Complaints Review Councillor with power to examine the procedures for the treatment of complaints and to review the treatment of specific complaints.
11. The authority of the Council of the Association to make regulations will be subject to the approval of the Lieutenant Governor in Council and to prior review by the Minister. Notice and comment provisions are included in the regulation-making procedure. In addition, the Minister may advise the Council with respect to the implementation of the Act and the regulations. Where the Council does not comply with a request by the Minister, the Lieutenant Governor in Council will have authority to make, amend or revoke a regulation.

Bill 127

1987

An Act to revise the Surveyors Act

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

"Association" means Association of Ontario Land Surveyors;

"by-laws" means by-laws made under this Act;

“certificate of authorization” means certificate of authorization issued under this Act to provide to the public services that are part of the practice of cadastral surveying;

“certificate of registration” means certificate of registration issued under this Act authorizing the holder to hold himself out as a member of the Association;

“Council” means Council of the Association;

“graphic representation” means a representation produced by an electrical, electronic, photographic or printing method and includes a representation produced on a video display terminal;

“licence” means licence issued under this Act to engage in the practice of cadastral surveying;

“licensed”, in relation to a person, means the person is the holder of a licence;

“Minister” means the Minister of Natural Resources or such other member of the Executive Council as is designated by the Lieutenant Governor in Council;

“practice of cadastral surveying” means advising on, reporting on, conducting or supervising the conducting of surveys to establish, locate, define or describe lines, boundaries or corners of parcels of land or land covered with water;

“practice of professional land surveying” means the determination of natural and man-made features of the surface of the earth and the storage and representation of such features on a chart, map, plan or graphic representation, and includes the practice of cadastral surveying;

“Registrar” means Registrar of the Association;

“regulations” means regulations made under this Act.

Association

2.—(1) The Association of Ontario Land Surveyors, a body corporate, is continued as a corporation without share capital.

Principal
object

(2) The principal object of the Association is to regulate the practice of professional land surveying and to govern its members and holders of certificates of authorization in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected.

(3) For the purpose of carrying out its principal object, the Association has the following additional objects: Additional
objects

1. To establish, maintain and develop standards of knowledge and skill among its members.
2. To establish, maintain and develop standards of qualification and practice for the practice of professional land surveying.
3. To establish, maintain and develop standards of professional ethics among its members.
4. To promote public awareness of the role of the Association.
5. To perform such other duties and exercise such other powers as are imposed or conferred on the Association by or under any Act.

3.—(1) The Council of the Association is continued and shall be the governing body and board of directors of the Association and shall manage and administer its affairs. Council

(2) The Council shall be composed of, Composition
of Council

- (a) six persons who are members of the Association and who are elected by the members of the Association as provided by the regulations;
- (b) the president and the vice-president, each of whom shall be elected annually by and from among the members of the Association as provided by the regulations;
- (c) the immediate past president;
- (d) the Surveyor General;
- (e) two persons who are not members of the governing body of a self-regulating licensing body under any other Act or licensed under this Act and who are appointed by the Lieutenant Governor in Council; and
- (f) one person who is not licensed under this Act and who is a barrister and solicitor of at least ten years standing in Ontario and who is appointed by the Lieutenant Governor in Council.

Term of
appointed
member

(3) A person appointed under clause (2) (e) or (f) shall be appointed for a term of not more than three years.

Reappoint-
ment

(4) A person appointed under clause (2) (e) or (f) may be reappointed for one or more terms of not more than three years each.

Remuner-
ation of
appointed
member

(5) A person appointed under clause (2) (e) or (f) shall be paid, out of the moneys appropriated therefor by the Legislature, such expenses and remuneration as are determined by the Lieutenant Governor in Council.

Idem

(6) No person shall be elected or appointed to the Council unless he or she is a Canadian citizen.

Qualifica-
tions to
vote

(7) Every member of the Association who is not in default of payment of the annual fee prescribed by the by-laws is qualified to vote at an election of members of the Council.

Registrar
and staff

(8) The Council shall appoint during pleasure a Registrar and may appoint one or more deputy registrars who shall have the powers of the Registrar for the purposes of this Act, and may appoint such other persons as are from time to time necessary or desirable in the opinion of the Council to perform the work of the Association.

Quorum

(9) A majority of the members of the Council constitutes a quorum.

Vacancies

(10) Where one or more vacancies occur in the membership of the Council, the members remaining in office constitute the Council so long as their number is not fewer than a quorum.

Filling
of
vacancy

(11) A vacancy on the Council caused by the death, resignation, removal or incapacity to act of an elected member of the Council shall be filled by a member of the Association,

(a) where a quorum of the Council remains in office, appointed by the majority of the Council, and the member so appointed shall be deemed to be an elected member of the Council; or

(b) where no quorum of the Council remains in office, elected in accordance with the regulations,

and the member so appointed or elected shall hold office for the unexpired portion of the term of office of the member whose office he or she is elected or appointed to fill.

Meetings
of Council

(12) The Council shall meet at least four times a year.

(13) The members of the Council of The Association of Ontario Land Surveyors who were elected or appointed and in office immediately before this Act comes into force shall continue in office and shall be deemed to be elected or appointed, as the case requires, under subsection (2) until the expiration of the term for which they were elected or appointed or until the office otherwise becomes vacant.

Continuation
of Council
members

4. The Association shall hold an annual meeting of the members of the Association not more than fifteen months after the holding of the last preceding annual meeting.

Annual
meetings

5.—(1) Every person licensed by the Association is a member of the Association, subject to any term, condition or limitation to which the licence is subject.

Membership

(2) Every person who is the holder of a certificate of registration is a member of the Association subject to any term, condition or limitation to which the certificate of registration is subject.

Idem

(3) A member may resign his or her membership by filing with the Registrar a resignation in writing, and the member's licence or certificate of registration is thereupon cancelled, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of his or her professional conduct while a member.

Resignation
of
membership

6. In addition to his or her other powers and duties under this Act, the Minister may,

Powers
of
Minister

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Act and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

7.—(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

Regulations

1. defining constituencies and prescribing the number of representatives on the Council of each constituency;

R.S.O. 1980,
c. 484

2. respecting and governing the qualifications, nomination, election and term or terms of office of the members to be elected to the Council, and controverted elections;
3. prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
4. respecting the composition of the committees required by this Act, other than the Complaints Committee and the Discipline Committee, the mechanism of the appointment of members of the committees and procedures ancillary to those specified in this Act in respect of any committee;
5. respecting matters of practice and procedure before committees required under this Act not inconsistent with this Act and the *Statutory Powers Procedure Act*;
6. prescribing the quorums of the committees required by this Act, except the Complaints Committee and the Discipline Committee;
7. prescribing classes of persons whose interests are related to those of the Association and the privileges of persons in the classes in relation to the Association;
8. respecting any matter ancillary to the provisions of this Act with regard to the issuing, suspension and revocation of licences, certificates of authorization and certificates of registration, and the requirements and qualifications therefor, including but not limited to regulations respecting,
 - i. the scope, standards and conduct of any examination set or approved by the Council as a licensing requirement or as a requirement for a certificate of registration,
 - ii. the curricula and standards of professional training programs offered by the Council,
 - iii. the academic, experience and other requirements for admission into professional training programs,

- iv. the academic and experience requirements for the issuance of a licence, and
 - v. the academic and experience requirements for the issuance of a certificate of registration;
- 9. prescribing terms and conditions of licences, certificates of authorization or certificates of registration;
 - 10. prescribing forms of applications for licences, certificates of authorization and certificates of registration and requiring their use;
 - 11. for the purposes of section 14, prescribing a proportion greater than 70 per cent of the shares of corporations that engage in the business of providing services that are within the practice of cadastral surveying;
 - 12. requiring the making of returns of information in respect of the holdings of shares and the officers and directors of corporations that apply for or hold certificates of authorization, and prescribing and requiring the use of forms of such returns;
 - 13. requiring and governing the signing and sealing of documents and drawings by members of the Association or by members entered on a specific register of the Association, specifying the forms of seals and respecting the issuance and ownership of seals;
 - 14. requiring the making of returns of information by members of the Association and holders of certificates of authorization in respect of names, addresses, telephone numbers, associates, partners, employees, directors, officers and shareholdings, and, if the corporation engages in the practice of cadastral surveying, the name of the member of the Association who directs the practice of cadastral surveying by the corporation, and in respect of professional liability insurance, and prescribing and requiring the use of forms of such returns;
 - 15. governing the use of names and designations in the practice of professional land surveying by members of the Association and holders of certificates of authorization;

16. providing for the maintenance and inspection of registers of persons permitted to engage in the practice of professional land surveying;
17. prescribing and governing standards of practice and performance standards for the practice of professional land surveying;
18. providing for the setting of schedules of suggested fees for the practice of professional land surveying and for the publication of the schedules;
19. respecting the advertising of the practice of professional land surveying;
20. prescribing a code of ethics;
21. defining professional misconduct for the purposes of this Act;
22. providing for the designation of members of the Association as specialists, prescribing the qualifications and requirements for designation as a specialist, providing for the suspension or revocation of such a designation and for the regulation and prohibition of the use of the designation by members of the Association;
23. providing for inspection programs related to the practice of professional land surveying, including programs for the inspection of records, other than financial records, of members of the Association and holders of certificates of authorization;
24. providing for the compilation of statistical data on the supply, distribution and professional activities of members of the Association and holders of certificates of authorization and on remuneration for the practice of professional land surveying and requiring members of the Association and holders of certificates of authorization to provide the information necessary to compile such statistics, but persons engaged in the administration of this Act shall maintain secret the names of persons providing the information as a matter that comes to their knowledge in the course of their duties under this Act;
25. requiring members of the Association or holders of certificates of authorization, or both of them, to obtain and to maintain insurance against liability

that may be incurred in the practice of professional land surveying, respecting the terms and conditions and prescribing the minimum amounts of such insurance, requiring such members and holders to provide to the Registrar proof of the insurance coverage, and respecting the form of the proof and the times when the proof shall be provided;

26. exempting any class of members or holders of certificates of authorization from the requirement to be insured in respect of professional liability, and classifying members or holders of certificates of authorization for the purpose of such exemption;
27. requiring members of the Association or holders of certificates of authorization, or both, to inform the Registrar in respect of claims or impending claims against them for professional liability;
28. prohibiting or regulating the practice of professional land surveying where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
29. providing for a program of continuing education of members of the Association;
30. respecting the duties and authority of the Registrar;
31. prescribing qualifications and requirements that shall be complied with to obtain the reinstatement of a licence, certificate of registration or a certificate of authorization that was cancelled by the Registrar;
32. classifying and exempting any class of holders of licences, certificates of registration or certificates of authorization from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable;
33. prescribing any matter referred to in this Act as prescribed by the regulations.

(2) The Council shall not request that the Lieutenant Governor in Council approve a regulation made by the Council until the regulation is confirmed by the members of the Association.

Confirmation
by members

Voting

(3) The members of the Association may confirm a regulation by a majority of those voting,

- (a) at an annual meeting;
- (b) at a general meeting of the Association called for the purpose; or
- (c) by means of a vote conducted by mail.

Distribution
of
regulations

(4) A copy of each regulation made under subsection (1),

- (a) shall be forwarded to each member of the Association and to each holder of a certificate of authorization; and
- (b) shall be available for public inspection in the office of the Association.

Regulations
by
Lieutenant
Governor in
Council

(5) Where the Minister requests in writing that the Council make, amend or revoke a regulation under subsection (1) and the Council has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request.

Idem,
distribution

(6) Where the Lieutenant Governor in Council makes, amends or revokes a regulation under subsection (5), the Minister shall transmit a copy of the regulation, amendment or revocation to the Council and the Council shall cause the regulation, amendment or revocation to be distributed and to be made available in the same manner as a regulation made under subsection (1).

By-laws

8.—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the Association not inconsistent with this Act and the regulations and, without limiting the generality of the foregoing,

- 1. prescribing the seal of the Association;
- 2. providing for the execution of documents by the Association;
- 3. respecting banking and finance;
- 4. fixing the financial year of the Association and providing for the audit of the accounts and transactions of the Association;

5. respecting the calling, holding and conducting of meetings of the Council and the duties of members of the Council;
6. providing for meetings of the Council and committees, except in a proceeding in respect of a licence or a certificate of authorization or a certificate of registration, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and a member of the Council or committee participating in a meeting in accordance with such by-law shall be deemed to be present in person at the meeting;
7. providing that the Council or a committee may act upon a resolution consented to by the signatures of all members of the Council or the committee except in a proceeding in respect of a licence or a certificate of authorization or a certificate of registration, and a resolution so consented to in accordance with such a by-law is as valid and effective as if passed at a meeting of the Council or the committee duly called, constituted and held for that purpose;
8. respecting the calling, holding and conducting of meetings of the membership of the Association;
9. prescribing the remuneration of the members of the Council and committees, other than persons appointed by the Lieutenant Governor in Council, and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
10. delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
11. prescribing the positions and qualifications of officers of the Association, providing procedures for their selection and the filling of vacancies in the offices of the Association, and prescribing the duties of officers of the Association;
12. providing for the appointment of inspectors for the purposes of this Act;
13. prescribing forms and providing for their use;

14. providing procedures for the making, amending and revoking of the by-laws;
15. respecting management of the property of the Association;
16. providing for the appointment, composition, powers and duties of additional or special committees;
17. respecting the application of the funds of the Association and the investment and reinvestment of any of its funds not immediately required, and for the safekeeping of its securities;
18. respecting the borrowing of money by the Association and the giving of security therefor;
19. respecting membership of the Association in other organizations, the payment of annual assessments and provision for representatives at meetings;
20. authorizing the making of grants for any purpose that may tend to advance knowledge of professional land surveying education, or maintain or improve the standards of practice in professional land surveying or support and encourage public information and interest in the role of professional land surveying in society;
21. respecting scholarships, bursaries and prizes related to the study of professional land surveying;
22. prescribing the amounts of and requiring the payment of annual fees by members of the Association and holders of certificates of authorization and by students and members of related classes recognized by the Association, and fees for licensing, certification, registration, examinations and continuing education, including penalties for late payment, fees in respect of the Association's quality control program for plans of survey and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
23. providing for the entering into of arrangements by the Association for its members and holders of certificates of authorization respecting indemnity for professional liability and requiring the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members of the

Association and holders of certificates of authorization in respect of professional liability;

24. respecting the Compensation Fund and prescribing the amount of the levy to be paid to the Association for the Fund and exempting any class of members from all or any part of such levy;
25. providing for the payment to the Association by any member of the cost of any investigation or audit of the member's books, records, accounts and transactions;
26. providing for the establishment of group insurance plans, other than for professional liability, in which members of the Association may participate on a voluntary basis;
27. regarding such other matters as are entailed in carrying on the business of the Association and are not included in section 7.

(2) A by-law passed by the Council is not effective until confirmed by the members of the Association. Confirmation
by members

(3) The members of the Association may confirm a by-law by a majority of those voting, Voting

- (a) at an annual meeting;
- (b) at a general meeting of the Association called for the purpose; or
- (c) by means of a vote conducted by mail.

(4) A copy of the by-laws made under subsection (1) and amendments thereto, Distribution
of by-laws

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each member; and
- (c) shall be available for public inspection in the office of the Association.

9.—(1) The Council shall establish and appoint as provided in this Act the following committees: Committees

- (a) Executive Committee;

- (b) Academic and Experience Requirements Committee;
- (c) Registration Committee;
- (d) Complaints Committee;
- (e) Discipline Committee;
- (f) Fees Mediation Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of a committee, the members remaining in office constitute the committee so long as their number is not fewer than a quorum of the committee.

Executive Committee

10.—(1) The Council may delegate to the Executive Committee the authority to exercise any power or perform any duty of the Council, other than to make, amend or revoke a regulation or a by-law.

Urgent matters

(2) Subject to ratification by the Council at its next ensuing meeting, the Executive Committee may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or a by-law.

Cadastral surveying, licence required

11.—(1) No person shall engage in the practice of cadastral surveying or hold himself or herself out as engaging in the practice of cadastral surveying unless licensed under this Act.

Certificate of authorization

(2) No person shall provide to a member of the public a service that is part of the practice of cadastral surveying except under and in accordance with a certificate of authorization.

Proof of practice

(3) For the purposes of subsections (1) and (2), proof of the performance of one act in the practice of cadastral surveying on one occasion is sufficient to establish engaging in the practice of cadastral surveying.

Certificate of registration

(4) No person shall hold himself or herself out as the holder of a certificate of registration unless such person is the holder of a certificate of registration issued under this Act.

Issuance of licence

12.—(1) The Registrar shall issue a licence to a natural person who applies therefor in accordance with the regulations and,

- (a) is a citizen of Canada or has the status of a permanent resident of Canada;
- (b) is not less than eighteen years of age;
- (c) has complied with the academic requirements specified in the regulations for the issuance of the licence and has passed such examinations as the Council has set or approved in accordance with the regulations or is exempted therefrom by the Council;
- (d) has complied with the experience requirements specified in the regulations for the issuance of the licence; and
- (e) is of good character.

(2) The Registrar may refuse to issue a licence to an applicant where the Registrar is of the opinion, upon reasonable and probable grounds, that the past conduct of the applicant affords grounds for belief that the applicant will not engage in the practice of cadastral surveying in accordance with the law and with honesty and integrity.

Grounds for
refusal
to issue
licence

(3) The Registrar, on his or her own initiative, may refer and on the request of an applicant shall refer the application of the applicant for the issuance of a licence to the Academic and Experience Requirements Committee for a determination as to whether or not the applicant has met the academic requirements or the experience requirements or both prescribed by the regulations for the issuance of the licence.

Referral to
Committee
on
Academic
and
Experience
Requirements

(4) The Committee may direct the Registrar to issue a licence subject to such conditions in respect of completion by the applicant of such academic requirements or experience requirements as are specified by the Committee.

Direction by
Committee

(5) A determination or direction by the Committee under subsection (3) or (4) is final and is binding on the Registrar and on the applicant.

Determi-
nation
by
Committee

(6) The Committee shall receive written submissions from an applicant but is not required to hold or to afford to any person a hearing or an opportunity to make oral submissions before making a determination under subsection (3).

Hearing

(7) The Registrar shall give notice to the applicant of a determination or direction by the Committee under subsection (3) or (4) and, if the applicant is rejected, the notice shall detail the specific requirements that the applicant must meet.

Notice of
determination
or direction

Corporation

13. A corporation that holds a certificate of authorization may provide services that are within the practice of cadastral surveying.

Issuance of
certificate
of
authorization

14.—(1) The Registrar shall issue a certificate of authorization to a licensed member of the Association who applies therefor in accordance with the regulations and who meets the requirements and qualifications prescribed by the regulations for the issuance of the certificate of authorization.

Issuance of
certificate
of
authorization
to
corporation

(2) The Registrar shall issue a certificate of authorization to a corporation that applies therefor in accordance with the regulations and meets the following requirements:

1. The primary function of the corporation must be to engage in the business of providing services that are within the practice of cadastral surveying.
2. At least one director or full-time employee of the corporation must be a licensed member of the Association who holds a certificate of authorization and who agrees to personally supervise and direct the practice of cadastral surveying for the corporation.
3. Not less than 70 per cent of each class of shares of the corporation must be owned by and registered in the name of one or more licensed members of the Association.

Issuance of
certificate
of
authorization

(3) The Registrar shall issue a certificate of authorization to a partnership of licensed members of the Association that applies therefor in accordance with the regulations and that proposes to engage in the practice of cadastral surveying.

Partnership
of
corporations

(4) The Registrar shall issue a certificate of authorization to a partnership of corporations that applies therefor in accordance with the regulations.

Past
conduct

(5) The Registrar may refuse to issue or may suspend or revoke a certificate of authorization where,

- (a) the Registrar is of the opinion, upon reasonable and probable grounds, that the past conduct of the applicant for or the holder of the certificate of authorization or the past conduct of a person who is in a position of authority or responsibility in the operation of the business of the applicant for or the holder of the certificate of authorization affords grounds for the belief that the applicant or holder will not engage in the business of providing services

that are within the practice of cadastral surveying in accordance with the law and with honesty and integrity; or

- (b) the holder of the certificate of authorization does not meet the requirements or the qualifications for the issuance of the certificate of authorization set out in the regulations; or
- (c) there is a breach of a condition of the certificate of authorization.

(6) The Registrar may refuse to issue a certificate of authorization to a licensed member of the Association or may revoke a certificate of authorization held by a licensed member of the Association where the Registrar is of the opinion, upon reasonable and probable grounds, that the member has not engaged in the practice of cadastral surveying during the period of five years preceding the date of the refusal or revocation.

Refusal or
revocation

15.—(1) A natural person, a partnership or a corporation that engages in the business of providing services that are within the practice of cadastral surveying under the authority of a certificate of authorization shall provide the services only under the personal supervision and direction of a licensed member of the Association.

Supervision
by Ontario
land surveyor

(2) A member of the Association who personally supervises and directs the providing of services within the practice of cadastral surveying by a holder of a certificate of authorization or who assumes responsibility for and supervises the practice of cadastral surveying related to the providing of services by a holder of a certificate of authorization is subject to the same standards of professional conduct and competence in respect of the services and the related practice of cadastral surveying as if the services were provided or the practice of cadastral surveying was engaged in by the member of the Association.

Professional
responsi-
bility of
supervising
Ontario land
surveyor

16.—(1) The Registrar shall issue a certificate of registration in a branch of professional land surveying to an applicant therefor who meets the requirements and qualifications prescribed by the regulations in relation to the branch.

Certificate
of
registration

(2) Subsection (1) applies in respect of professional land surveying in the branches of photogrammetry, geodesy and hydrography and such other branches as are prescribed by the regulations but does not apply in respect of cadastral surveying.

Idem

Hearing by
Registration
Committee

17.—(1) Where the Registrar proposes,

- (a) to refuse an application for a licence, a certificate of authorization or a certificate of registration;
- (b) to revoke a certificate of authorization; or
- (c) to issue a licence, a certificate of authorization or a certificate of registration subject to terms, conditions or limitations,

the Registrar shall serve notice of the proposal, together with written reasons therefor, on the applicant.

Exceptions

(2) Subsection (1) does not apply in respect of a refusal to issue a licence or a certificate of registration to a person who was previously licensed or who previously held a certificate of registration and whose licence or certificate of registration was suspended or revoked as a result of a decision of the Discipline Committee.

Idem

(3) Subsection (1) does not apply in respect of a refusal to issue a certificate of authorization to a person or a partnership that previously held a certificate of authorization and whose certificate of authorization was suspended or revoked as a result of a decision of the Discipline Committee.

Notice

(4) A notice under subsection (1) shall state that the applicant is entitled to a hearing by the Registration Committee if the applicant delivers, within thirty days after the notice under subsection (1) is served on the applicant, notice in writing requiring a hearing by the Registration Committee, and the applicant may so require such a hearing.

Power of
Registrar
where no
hearing

(5) Where the applicant does not require a hearing by the Registration Committee in accordance with subsection (4), the Registrar may carry out the proposal stated in the notice under subsection (1).

Hearing by
Registration
Committee

(6) Where an applicant requires a hearing by the Registration Committee in accordance with subsection (1), the Registration Committee shall appoint a time for, give notice of and shall hold the hearing.

Disability
of member

(7) Where the Registration Committee commences a hearing and a member of the Registration Committee becomes unable to act, the remaining members may complete the hearing notwithstanding the absence of the member who is unable to act.

(8) Where a proceeding is commenced before the Registration Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated other than for cause before the proceeding is disposed of but after evidence is heard, the member shall be deemed to remain a member of the Registration Committee for the purpose of completing the disposition of the proceeding in the same manner as if the term of office had not expired or been terminated.

Continuation
on expiry
of Committee
membership

(9) Following a hearing under this section in respect of a proposal by the Registrar in relation to a licence, the Registration Committee by order may,

Powers of
Registration
Committee
re licences

- (a) where the Committee is of the opinion upon reasonable grounds that the applicant meets the requirements and qualifications of this Act and the regulations and will engage in the practice of cadastral surveying with competence and integrity, direct the Registrar to issue a licence to the applicant;
- (b) where the Committee is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications of this Act and the regulations,
 - (i) direct the Registrar to refuse to issue a licence to the applicant, or
 - (ii) where the committee is of the opinion upon reasonable grounds that the applicant will engage in the practice of cadastral surveying with competence and integrity, exempt the applicant from any of the requirements and qualifications of this Act and the regulations and direct the Registrar to issue a licence; or
- (c) where the Committee is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the practice of cadastral surveying with competence and integrity,
 - (i) require the applicant to take and successfully complete such examinations as the Registration Committee may set or approve and to pay such fees therefor as the Registration Committee fixes,

- (ii) require the applicant to take such additional training as the Registration Committee specifies, or
- (iii) direct the Registrar to issue a licence subject to such terms, conditions and limitations as the Registration Committee specifies.

Powers of
Registration
Committee re
certificates
of
authorization

(10) Following a hearing under this section in respect of a proposal by the Registrar in relation to a certificate of authorization, the Registration Committee by order may,

- (a) where the Committee is of the opinion upon reasonable grounds that the applicant meets the requirements and qualifications of this Act and the regulations and will engage in the business of providing services that are within the practice of cadastral surveying with competence and integrity, direct the Registrar to issue a certificate of authorization to the applicant or to not revoke the certificate of authorization held by the applicant, as the case requires;
- (b) where the Committee is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications of this Act and the regulations,
 - (i) direct the Registrar to refuse to issue a certificate of authorization to the applicant or to revoke the certificate of authorization held by the applicant, or
 - (ii) where the Committee is of the opinion upon reasonable grounds that the applicant will engage in the business of providing services that are within the practice of cadastral surveying with competence and integrity, exempt the applicant from any of the requirements and qualifications of this Act and the regulations and direct the Registrar to issue a certificate of authorization to the applicant or to not revoke the certificate of authorization held by the applicant, as the case requires; or
- (c) where the Committee is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the business of providing services that are within the practice of cadastral surveying with competence and integrity, direct

the Registrar to issue a certificate of authorization subject to such terms, conditions and limitations as the Registration Committee specifies.

(11) Following a hearing under this section in respect of a proposal by the Registrar in relation to a certificate of registration, the Registration Committee by order may,

Powers of
Registration
Committee re
certificates
of
registration

- (a) where the Committee is of the opinion upon reasonable grounds that the applicant meets the requirements and qualifications prescribed by the regulations, direct the Registrar to issue a certificate of registration to the applicant or to not revoke the certificate of registration held by the applicant, as the case requires;
- (b) where the Committee is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications prescribed by the regulations,
 - (i) direct the Registrar to refuse to issue a certificate of registration to the applicant or to revoke the certificate of registration held by the applicant, as the case requires, or
 - (ii) where the Committee is of the opinion upon reasonable grounds that the applicant will engage in the practice of professional surveying with competence and integrity, exempt the applicant from any of the requirements and qualifications prescribed by the regulations and direct the Registrar to issue a certificate of registration to the applicant or to not revoke the certificate of registration held by the applicant, as the case requires; or
- (c) where the Committee is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the practice of professional surveying with competence and integrity, direct the Registrar to issue a certificate of registration to the applicant subject to such terms, conditions and limitations as the Registration Committee specifies.

(12) The Registration Committee may extend the time for the giving of notice requiring a hearing by an applicant under this section before or after the expiration of such time where it is satisfied that there are apparent grounds for granting

Extension
of time for
requiring
hearing

relief to the applicant following upon a hearing and that there are reasonable grounds for applying for the extension, and the Registration Committee may give such directions as it considers proper consequent upon the extension.

Parties

(13) The Registrar and the applicant who has required the hearing are parties to proceedings before the Registration Committee under this section.

Opportunity
to show
compliance

(14) The applicant shall be given a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements in respect of the licence, the certificate of authorization or the certificate of registration, as the case requires.

Examination
of
documentary
evidence

(15) A party to proceedings under this section shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members
holding
hearing
not to have
taken part
in investi-
gation, etc.

(16) Members of the Registration Committee holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his or her representative except upon notice to and opportunity for both parties to participate, but the Registration Committee may seek legal advice from a person who is not counsel in the proceedings and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording
of evidence

(17) The oral evidence taken before the Registration Committee at a hearing shall be recorded and, if so required, copies of a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Only
members
at hearing
to participate
in decision

(18) No member of the Registration Committee shall participate in a decision of the Registration Committee following upon a hearing unless the member was present throughout the hearing and heard the evidence and argument of the parties.

Release of
documentary
evidence

(19) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person by the Registration Committee within a reasonable time after the matter in issue has been finally determined.

18.—(1) The Registrar shall maintain registers in which is entered every person who is a member of the Association and every holder of a certificate of authorization. Registers

(2) The Registrar shall note in the registers the terms, conditions and limitations attached to each licence, certificate of authorization and certificate of registration. Notation as to terms, conditions, limitations

(3) The Registrar shall note in the registers every revocation, suspension and cancellation or termination of a licence, certificate of authorization or certificate of registration. Notation as to revocation, suspension, etc.

(4) The Registrar shall note in the registers such other information as the Registration Committee or the Discipline Committee directs. Notation as to other information

(5) Any person has the right to inspect during normal business hours the registers maintained by the Registrar. Inspection

(6) The Registrar shall provide to any person, upon payment of a reasonable charge therefor, a copy of any part of the registers maintained by the Registrar. Copies

19.—(1) Every member of the Association under the *Surveyors Act*, being chapter 492 of the Revised Statutes of Ontario, 1980, immediately before this Act comes into force shall be deemed to be licensed in the same manner as if issued a licence under this Act. Continuation of memberships

(2) Every certificate of authorization issued under the said Act and in effect immediately before this Act comes into force continues in the same manner as if issued under this Act. Continuation of certificates of authorization

(3) Subsection (2) applies in the case of a corporation notwithstanding that the corporation does not comply with the requirement that not less than 70 per cent of each class of shares of the corporation must be owned by and registered in the name of one or more licensed members of the Association, if a majority of each class of shares of the corporation is owned by and registered in the name of one or more members of the Association. Idem, corporations

20.—(1) The Registrar may cancel a licence, a certificate of authorization or a certificate of registration for non-payment of any fee prescribed by the by-laws after giving the member or the holder of the certificate of authorization at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of his or her professional conduct while a member or holder. Cancellation for default of fees

Reinstatement

(2) A person who was a member or a holder of a certificate of authorization whose licence, certificate of authorization or certificate of registration was cancelled by the Registrar under subsection (1) is entitled to have the licence, certificate of authorization or certificate of registration reinstated upon compliance with the requirements and qualifications prescribed by the regulations.

Complaints Committee

21.—(1) The Complaints Committee shall be composed of,

- (a) at least one member of the Council who was elected to the Council;
- (b) at least one member of the Council who was appointed to the Council by the Lieutenant Governor in Council; and
- (c) such other members of the Association as may be appointed by the Council.

Idem

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

Chairman

(3) The Council shall name one member of the Complaints Committee to be chairman.

Quorum

(4) Three members of the Complaints Committee, of whom one shall be a person elected to the Council, constitute a quorum.

Duties of Complaints Committee

22.—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the Association regarding the conduct or actions of any member of the Association but no action shall be taken by the Committee under subsection (2) unless,

- (a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations the member may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it receives may, Idem

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee;
- (b) direct that the matter not be referred under clause (a); or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations or by-laws.

(3) The Committee shall give its decision in writing to the Registrar for the purposes of subsection (4) and, where the decision is made under clause (2) (b), its reasons therefor. Decision and reasons

(4) The Registrar shall send to the complainant and to the person complained against by prepaid first class mail a copy of the written decision made by the Complaints Committee and its reasons therefor, if any, together with notice advising the complainant of his or her right to apply to the Complaints Review Councillor under section 24. Notice

(5) The committee is not required to hold a hearing or to afford to any person an opportunity for a hearing or an opportunity to make oral submissions before making a decision or giving a direction under this section. Hearing

23.—(1) There shall be a Complaints Review Councillor who shall be appointed by and from among the members of the Council appointed by the Lieutenant Governor in Council. Complaints Review Councillor

(2) The Complaints Review Councillor is not eligible to be a member of the Complaints Committee or the Fees Mediation Committee. Idem

(3) The Complaints Review Councillor may examine from time to time the procedures for the treatment of complaints by the Association and, as mentioned in section 24, may review the treatment by the Association of individual complaints. Examination and review by Complaints Review Councillor

(4) In an examination or review in respect of the Association, the Complaints Review Councillor shall not inquire into the merits of any particular complaint made to the Association. Complaints Review Councillor not to inquire into merit of complaint

Discretionary
power of
Complaints
Review
Councillor

(5) The Complaints Review Councillor in his or her discretion may decide in a particular case not to make a review or not to continue a review in respect of the Association where,

- (a) the review is or would be in respect of the treatment of a complaint that was disposed of by the Association more than twelve months before the matter came to the attention of the Complaints Review Councillor; or
- (b) in the opinion of the Complaints Review Councillor,
 - (i) the application to the Complaints Review Councillor is frivolous or vexatious or is not made in good faith, or
 - (ii) the person who has made application to the Complaints Review Councillor has not a sufficient personal interest in the subject-matter of the particular complaint.

Notice

(6) Before commencing an examination or review in respect of the Association, the Complaints Review Councillor shall inform the Association of his or her intention to commence the examination or review.

Office
accommo-
dation

(7) The Council shall provide to the Complaints Review Councillor such accommodation and support staff in the offices of the Association as are necessary to the performance of the powers and duties of the Complaints Review Councillor.

Privacy

(8) Every examination or review by the Complaints Review Councillor in respect of the Association shall be conducted in private.

Receipt
of
information

(9) In conducting an examination or review in respect of the Association, the Complaints Review Councillor may hear or obtain information from any person and may make such inquiries as the Complaints Review Councillor thinks fit.

Hearing
not
required

(10) The Complaints Review Councillor is not required to hold or to afford to any person an opportunity for a hearing in relation to an examination, review or report in respect of the Association.

Duty to
furnish
information

(11) Every person who is,

- (a) a member of the Council;

- (b) an officer of the Association;
- (c) a member of a committee of the Association; or
- (d) an employee of the Association,

shall furnish to the Complaints Review Councillor such information regarding any proceedings or procedures of the Association in respect of the treatment of complaints made to the Association as the Complaints Review Councillor from time to time requires, and shall give the Complaints Review Councillor access to all records, reports, files and other papers and things belonging to or under the control of the Association or any of such persons and that relate to the treatment by the Association of complaints or any particular complaint.

(12) The Complaints Review Councillor shall make a report following upon each examination or review by him or her in respect of the Association.

Report by
Complaints
Review
Councillor

(13) Where the report follows upon an examination of the treatment of complaints by the Association, the Complaints Review Councillor shall transmit the report to the Council.

Report
following
upon
examination

(14) Where the report follows upon a review as to the treatment of a complaint by the Association, the Complaints Review Councillor shall transmit the report to the Council, to the complainant and to the person complained against.

Report
following
upon
review

(15) The Complaints Review Councillor may transmit a report following upon an examination or review to the Minister where, in the opinion of the Complaints Review Councillor, the report should be brought to the attention of the Minister.

Report to
Minister

(16) The Complaints Review Councillor may include in a report following upon an examination or review his or her recommendations in respect of the procedures of the Association, either generally or with respect to the treatment of a particular complaint.

Recommendations

(17) The Council shall consider each report, and any recommendations included in the report, transmitted to it by the Complaints Review Councillor and shall notify the Complaints Review Councillor of any action it has taken in consequence.

Consideration
by Council

24.—(1) Where a complaint respecting a member of the Association or a holder of a certificate of authorization has not been disposed of by the Complaints Committee within ninety days after the complaint is filed with the Registrar,

Review by
Complaints
Review
Councillor


upon application by the complainant or on his or her own initiative, the Complaints Review Councillor may review the treatment of the complaint by the Complaints Committee.

Application
to
Complaints
Review
Councillor

(2) A complainant who is not satisfied with the handling by the Complaints Committee of his or her complaint to the Committee may apply to the Complaints Review Councillor for a review of the treatment of the complaint after the Committee has disposed of the complaint.

Discipline
Committee

25.—(1) The Discipline Committee shall be composed of,

- (a) the persons appointed to the Discipline Committee by the Council from among the members of the Council elected to the Council;
- (b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council; and
- (c) the persons appointed to the Committee by the Council from among the members of the Association who have not less than ten years experience in the practice of professional land surveying. 

Quorum
and votes

(2) Three members of the Discipline Committee, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and all disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting.

Disability
of
member

(3) Where the Discipline Committee commences a hearing and a member of the Discipline Committee becomes unable to act, the remaining members may complete the hearing notwithstanding the absence of the member who is unable to act.

Chairman

(4) The Council shall name one member of the Discipline Committee who is a member of and elected to the Council to be chairman.

Reference
by Council
or Executive
Committee

(5) The Council, by resolution, may direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct or incompetence on the part of a member of the Association or a holder of a certificate of authorization specified in the resolution.

Duties of
Discipline
Committee

26.—(1) The Discipline Committee shall,

- (a) when so directed by the Council or the Complaints Committee, hear and determine allegations of pro-

fessional misconduct or incompetence against a member of the Association;

- (b) hear and determine matters referred to it under section 22, 25 or 35; and
- (c) perform such other duties as are assigned to it by the Council.

(2) A member of the Association may be found guilty of professional misconduct by the Committee if, Professional misconduct

- (a) the member has been found guilty of an offence relevant to his or her suitability to practise, upon proof of such conviction;
- (b) the member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

(3) The Discipline Committee may find a member of the Association to be incompetent if in its opinion, Incompetence

- (a) the member has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public the member serves of a nature or to an extent that demonstrates the member is unfit to carry out the responsibilities of a person engaged in the practice of professional land surveying; or
- (b) the member or holder is suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that the member no longer be permitted to engage in the practice of professional land surveying or that his practice of professional land surveying be restricted or, in the case of a member other than a licensed member, that the membership of the member be revoked or be restricted.

(4) Where the Discipline Committee finds a member of the Association guilty of professional misconduct or incompetence it may, by order, Powers of Discipline Committee

- (a) revoke the licence or certificate of registration, as the case may be, of the member;

- (b) suspend the licence or certificate of registration, as the case may be, of the member for a stated period, not exceeding twenty-four months;
- (c) accept the undertaking of the member to limit the professional work of the member or holder in the practice of professional land surveying to the extent specified in the undertaking;
- (d) impose terms, conditions and limitations on the licence or certificate of registration, as the case may be, of the member, including but not limited, in the case of a member, to the successful completion of a particular course or courses of study, as are specified by the Discipline Committee;
- (e) impose specific restrictions on the licence or certificate of registration, as the case may be, or on the certificate of authorization, including but not limited to,
 - (i) requiring the member to engage in the practice of professional land surveying only under the personal supervision and direction of another member,
 - (ii) requiring the member to not alone engage in the practice of professional land surveying,
 - (iii) requiring the member to accept periodic inspections by the Discipline Committee or its delegate of the books, accounts, records and plans of the member in connection with the member's practice,
 - (iv) requiring the member to report to the Registrar or to such committee of the Council as the Discipline Committee may specify on such matters in respect of the member's practice for such period of time, at such times and in such form, as the Discipline Committee may specify;
- (f) require that the member be reprimanded, admonished or counselled and, if considered warranted, direct that the fact of the reprimand, admonishment or counselling be recorded on the register;
- (g) revoke or suspend for a stated period of time the designation of the member by the Association as a

specialist in any branch of professional land surveying;

- (h) impose such fine as the Discipline Committee considers appropriate, to a maximum of \$5,000, to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (i) require the member to repay, waive or reduce the fee charged by the member in respect of the practice of professional land surveying related to the finding of professional misconduct or incompetence;
- (j) subject to subsection (5), in respect of orders of revocation or suspension, direct that the finding and the order of the Discipline Committee be published in an official publication of the Association in detail or in summary and either with or without including the name of the member;
- (k) fix and impose costs to be paid by the member to the Association;
- (l) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms or for such purpose as may be specified by the Discipline Committee, including but not limited to,
 - (i) the successful completion by the member of a particular course or courses of study,
 - (ii) the production to the Discipline Committee of evidence satisfactory to it that any physical or mental handicap in respect of which the penalty was imposed has been overcome,

or any combination of them.

(5) The Discipline Committee shall cause an order of the Committee revoking or suspending a licence or certificate of registration to be published, with or without the reasons therefor, in an official publication of the Association together with the name of the holder of the revoked or suspended licence, certificate of authorization or certificate of registration.

Publication
of revocation
or suspension

(6) The Discipline Committee shall cause a determination by the Committee that an allegation of professional misconduct or incompetence was unfounded to be published in an

Publication
on request

official publication of the Association, upon the request of the member against whom the allegation was made.

Costs

(7) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the Association reimburse the member for his or her costs or such portion thereof as the Discipline Committee fixes and the Association shall comply with the order.

Stay on
appeal for
incompetence

(8) Where the Discipline Committee revokes, suspends or restricts a licence or certificate of registration on the ground of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision unless the court to which the appeal is taken otherwise orders, and, where the court is satisfied that it is appropriate in the circumstances, the court may so order.

Stay on
appeal for
professional
misconduct

(9) Where the Discipline Committee revokes, suspends or restricts a licence or certificate of registration on a ground other than incompetence, the order does not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned, unless the Discipline Committee otherwise orders, and, where the Committee considers that it is appropriate for the protection of the public, the Committee may so order.

Service of
decision of
Discipline
Committee

(10) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member or holder.

Continuation
on expiry of
Committee
membership

(11) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated, other than for cause, before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if the term of office had not expired or been terminated.

Discipline
proceedings,
parties

27.—(1) In proceedings before the Discipline Committee, the Association and the member of the Association whose conduct is being investigated in the proceedings are parties to the proceedings.

Examination
of
documentary
evidence

(2) A member whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded an

opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(3) A member of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Council considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his or her representative except upon notice to and opportunity for all parties to participate, but the Discipline Committee may seek legal advice from a person who is not counsel in the proceedings and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Members holding hearing not to have taken part in investigation, etc.

(4) Notwithstanding anything in the *Statutory Powers Procedure Act*, hearings of the Discipline Committee shall be held *in camera*, but, if the party whose conduct is being investigated requests otherwise by a notice delivered to the Registrar at least five days before the day fixed for the hearing, the Discipline Committee shall conduct the hearing in public except where,

In camera
R.S.O. 1980,
c. 484

- (a) matters involving public security may be disclosed; or
- (b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

(5) The oral evidence taken before the Discipline Committee shall be recorded and, if so required, copies of a transcript thereof shall be furnished only to the parties at their own cost.

Recording of evidence

(6) Notwithstanding section 15 of the *Statutory Powers Procedure Act*, nothing is admissible in evidence before the Discipline Committee that would be inadmissible in a court in a civil case and the findings of the Discipline Committee shall be based exclusively on evidence admitted before it.

Evidence
R.S.O. 1980,
c. 484

(7) No member of the Discipline Committee shall participate in a decision of the Committee following upon a hearing unless the member was present throughout the hearing and heard the evidence and argument of the parties.

Only members at hearing to participate in decision

(8) Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the party

Release of documentary evidence

who produced them, be returned by the Committee within a reasonable time after the matter in issue has been finally determined.

Appeal
to court

28.—(1) A party to proceedings before the Registration Committee or the Discipline Committee may appeal to the Divisional Court, in accordance with the rules of court, from the decision or order of the committee.

Certified
copy of
record

(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of the fee therefor, the Registrar shall furnish the party with a certified copy of the record of the proceedings, including the documents received in evidence and the decision or order appealed from.

Powers of
court on
appeal

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the committee appealed from and may exercise all powers of the committee and may direct the committee to take any action which the committee may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the committee or the court may refer the matter back to the committee for rehearing in whole or in part, in accordance with such directions as the court considers proper.

Fees
Mediation
Committee

29.—(1) No person who is a member of the Complaints Committee or the Discipline Committee shall be a member of the Fees Mediation Committee.

Duties
of Fees
Mediation
Committee

(2) The Fees Mediation Committee,

- (a) shall, unless the committee considers it inappropriate to do so, mediate any written complaint by a client of a member of the Association or of a holder of a certificate of authorization in respect of a fee charged for services in the practice of professional land surveying provided to the client; and
- (b) shall perform such other duties as are assigned to it by the Council.

Arbitration
by Fees
Mediation
Committee

(3) The Fees Mediation Committee, with the written consent of all parties to the dispute, may arbitrate a dispute in respect of a fee between a client and a member of the Association or a holder of a certificate of authorization and in that case the decision of the Fees Mediation Committee is final and binding on all parties to the dispute.

(4) Where the Fees Mediation Committee acts as arbitrator under subsection (3), the *Arbitrations Act* does not apply.

Application
of
R.S.O. 1980,
c. 25

Enforcement

(5) A decision by the Fees Mediation Committee under subsection (3), exclusive of the reasons therefor, certified by the Registrar, may be filed with the Supreme Court or a county or district court and when filed the decision may be enforced in the same manner as a judgment of the court.

30.—(1) Where the Registrar believes on reasonable and probable grounds that a member of the Association has committed an act of professional misconduct or incompetence or that there is cause to refuse to issue or to suspend or revoke a certificate of authorization, the Registrar by order may appoint one or more persons to make an investigation to ascertain whether such act has occurred or there is such cause, and the person or persons appointed shall report the result of the investigation to the Registrar.

Registrar's
investigation

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member or holder of the certificate of authorization in respect of whom the investigation is being made and may, upon production of his or her appointment, enter at any reasonable time the business premises of the member or holder and examine books, records, documents and things relevant to the subject-matter of the investigation and, for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

Powers of
investigator

R.S.O. 1980,
c. 411

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or her or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Obstruction
of
investigator

(4) Where a provincial judge is satisfied on evidence upon oath,

Order by
provincial
judge

(a) that the Registrar had grounds for appointing and by order has appointed one or more persons to make an investigation; and

(b) that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the member of the Association or holder of a certificate of authorization whose affairs are being inves-

tigated and to the subject-matter of the investigation,

the provincial judge may issue an order authorizing the person or persons making the investigation, together with such police officer or officers as they call upon to assist them, to enter and search, by force, if necessary, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them.

Execution
of order

(5) An order issued under subsection (4) shall be executed at reasonable times as specified in the order.

Expiry
of order

(6) An order issued under subsection (4) shall state the date on which it expires, which shall be a date not later than fifteen days after the order is issued.

Ex parte
application

(7) A provincial judge may receive and consider an application for an order under subsection (4) without notice to and in the absence of the member of the Association or holder of a certificate of authorization whose affairs are being investigated.

Removal of
books, etc.

(8) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under this section relating to the member or holder whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member or holder whose practice is being investigated.

Admissibility
of copies

(9) Any copy made as provided in subsection (8) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as proof in the absence of evidence to the contrary of the original book, record or document and its contents.

Report of
Registrar

(10) The Registrar shall report the results of the investigation to the Council or such committee as the Registrar considers appropriate.

Information
re insurance
claims,
definition

31.—(1) In this section, “insurer” means a person offering insurance in respect of liability incurred in the practice of professional land surveying.

Information

(2) Upon the request of the Registrar, an insurer shall furnish to the Registrar any information that is in the possession

of the insurer and that is specified in the request related to a claim or claims for indemnity in respect of the practice of professional land surveying.

(3) Subsection (2) does not apply in respect of a document prepared by an insured person relating to a claim for indemnity in respect of the practice of professional land surveying by the insured person. Exception

(4) The Registrar may forward any information referred to in subsection (2) to such committee as he considers appropriate. Transmittal of information

32.—(1) No member of the Association or holder of a certificate of authorization shall engage in the practice of professional land surveying unless insured against professional liability in accordance with the regulations or in accordance with arrangements under subsection (2). Professional liability insurance

(2) The Association may make arrangements respecting insurance against professional liability for members of the Association and holders of certificates of authorization. Arrangements by Association

(3) Arrangements under subsection (2) may include arrangements respecting the payment and remission of premiums. Premiums

(4) The Association may prescribe levies that shall be paid by members of the Association and holders of certificates of authorization related to arrangements under subsection (2). Levies

33.—(1) The Association shall continue to maintain the fund known as the “Compensation Fund” and shall continue to hold it in trust for the purposes of this section. Compensation Fund

(2) The Compensation Fund shall be made up of, Composition of Fund

(a) all moneys paid by members of the Association under subsection (3);

(b) all moneys earned from the investment of moneys in the Fund;

(c) all moneys recovered under subsection (7); and

(d) all moneys contributed by any person.

(3) Every member, other than those of a class exempted by the by-laws, shall pay to the Association for the Compensation Fund levy Compensation Fund levy

tion Fund such sum as is prescribed from time to time by the by-laws.

Insurance

(4) The Council may insure with any insurer licensed to carry on business in Ontario for such purposes and on such terms as the Council considers expedient in relation to the Compensation Fund, and, in such event, the moneys in the Fund may be used for the payment of premiums.

Grants

(5) The Council in its absolute discretion may make grants from the Compensation Fund in order to relieve or mitigate loss sustained by any person in consequence of dishonesty or incompetence in the practice of professional land surveying on the part of any member notwithstanding that after the commission of the act of dishonesty or incompetence the member may have died or ceased to administer his or her affairs or to be a member.

Conditions
of grants

(6) No grant shall be made out of the Compensation Fund unless notice in writing of the loss is received by the Registrar within six months after the loss came to the knowledge of the person suffering the loss or within such further time, not exceeding eighteen months, as in any case may be allowed by the Council.

Subrogation

(7) If a grant is made under this section, the Association is subrogated to the amount of the grant to any rights or remedies to which the person receiving the grant was entitled on account of the loss in respect of which the grant was made against the member or any other person, or, in the event of the death or insolvency or other disability of the member or other person, against his or her personal representative or other person administering his or her estate.

Grantees'
rights con-
ditionally
limited

(8) A person to whom a grant is made under this section, or, in the event of the person's death or insolvency or other disability, the personal representative or other person administering his or her estate, has no right to receive anything from the member or the member's estate in respect of the loss in respect of which the grant was made until the Association has been reimbursed the full amount of the grant.

Reimburse-
ment from
bankrupt's
estate

(9) Where a grant has been made under this section and the member has been declared a bankrupt, the Association is entitled to prove against the bankrupt's estate for the full amount of the claim of the person to whom the grant was made and to receive all dividends on such amount until the Association has been reimbursed the full amount of the grant.

(10) The Council may delegate any of the powers conferred upon it by this section to a committee of the Council and, whether or not the Council has made any such delegation, it may appoint any member as a referee and delegate to the member any of the powers conferred upon it by this section that are not delegated to a committee.

Delegation of powers to committee or referee or both

(11) Where the Council has delegated any of its powers under this section to a committee or to a referee, the committee or referee, as the case may be, shall report as required to the Council.

Reports

(12) There may be paid out of the Compensation Fund the costs of its administration, including the costs of investigations and hearings and all other costs, salaries and expenses necessarily incidental to the administration of the Fund.

Costs of administration

(13) Surplus moneys in the Compensation Fund may be applied for such other purposes as are specified by the Council and approved by the Lieutenant Governor in Council.

Other purposes

34. Where a licence, certificate of authorization or certificate of registration is revoked or cancelled, the former holder thereof shall forthwith deliver the licence or certificate and related seal to the Registrar.

Surrender of cancelled licence, etc.

35.—(1) A person whose licence, certificate of authorization or certificate of registration has been revoked for cause under this Act, or whose membership has been cancelled for cause under a predecessor of this Act, may apply in writing to the Registrar for the issuance of a licence, certificate of authorization or certificate of registration, but such application shall not be made sooner than two years after the revocation or cancellation.

Restoration of licence, etc.

(2) The Registrar shall refer the application to the Discipline Committee which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the applicant.

Reference to Discipline Committee

(3) The provisions of this Act applying to hearings by the Registration Committee, except section 28, apply with necessary modifications to proceedings of the Discipline Committee under this section.

Procedures

(4) Notwithstanding subsections (1), (2) and (3), the Council may direct at any time that a licence, certificate of authorization or certificate of registration be issued to a person whose licence, certificate of authorization or certificate of registration has previously been revoked for cause or sus-

Direction by Council to issue licence

pending for cause or that a suspension or cancellation for cause under a predecessor of this Act be removed, subject to such terms, conditions and limitations as the Council considers appropriate.

Confidentiality

36.—(1) Every person engaged in the administration of this Act, including any person making a review or investigation under section 24 or 30, shall preserve secrecy with respect to all matters that come to the person's knowledge in the course of the person's duties, employment, inquiry or investigation and shall not communicate any such matter to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceedings under this Act or the regulations;
- (b) that the person may communicate any such matter to his or her counsel; or
- (c) with the consent of the person to whom the information relates.

Testimony
in civil
action

(2) No person to whom subsection (1) applies shall be required to give testimony or to produce any book, record, document or thing in any action or proceeding with regard to information obtained in the course of his or her duties, employment, inquiry or investigation except in a proceeding under this Act or the regulations.

Use of
"O.L.S." by
corporation

37.—(1) A corporation whose name includes the title "Ontario land surveyor" or the initials "O.L.S." and that ceases to hold a subsisting certificate of authorization shall not carry on or engage in any business until the title "Ontario land surveyor" or the initials "O.L.S." are removed from the name of the corporation.

Exception

(2) Subsection (1) does not apply to prevent a corporation from carrying on an activity necessary to the winding up of the corporation.

Proceedings
to prohibit
continuation
or repetition
of contra-
vention

38. Where any provision of this Act or the regulations is contravened, notwithstanding any other remedy or any penalty imposed, the Association may apply to a judge of the Supreme Court for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified in the order that, in the opinion of the court, will result or will likely result in the continuation or repetition of the contravention by the person committing the contraven-

tion, and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Supreme Court.

39.—(1) Every person who contravenes section 11 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$15,000 and for each subsequent offence to a fine of not more than \$30,000. Penalties

(2) Every person who is not a member of the Association and who uses the title “Ontario land surveyor” or the initials “O.L.S.” as an occupational designation is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$5,000 and for each subsequent offence to a fine of not more than \$15,000. Idem

(3) Every person who obstructs a person appointed to make an investigation under section 30 in the course of his or her duties is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. Idem

(4) Every corporation that contravenes section 37 is guilty of an offence and on conviction is liable for a first offence to a fine of not more than \$5,000 and for each subsequent offence to a fine of not more than \$15,000. Idem

(5) Where a corporation is guilty of an offence under subsection (1), (2), (3) or (4), every director or officer of the corporation who authorizes, permits or acquiesces in the offence is guilty of an offence and on conviction is liable to a fine of not more than \$30,000. Idem, director or officer of corporation

(6) Proceedings shall not be commenced in respect of an offence under subsection (1), (2), (3), (4) or (5) after two years after the date on which the offence was, or is alleged to have been, committed. Limitation

40.—(1) Any person who makes or causes to be made any wilful falsification in any matter relating to a register or issues a false licence, certificate of authorization or certificate of registration or a false document with respect to a register maintained by the Registrar under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. Falsification of certificate

(2) Any person who wilfully procures or attempts to procure himself or herself to be licensed or to be issued a certificate of authorization or a certificate of registration under this Act by knowingly making any false representation or declaration or by making a fraudulent representation or declaration, Offences for false representation

either orally or in writing, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

Aiding and assisting

(3) Every person knowingly aiding and assisting in the commission of an offence under subsection (2) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

Limitation period

(4) Proceedings to obtain a conviction for an offence under subsection (1) shall not be commenced after the expiration of six months after the date on which the offence was, or is alleged to have been, committed.

Onus of proof

41. Where licensing or the holding of a certificate of authorization under this Act is required to permit the lawful doing of any act or thing, if in any prosecution it is proven that the defendant has done such act or thing, the burden of proving that the defendant was so licensed or that the defendant held a subsisting certificate of authorization under this Act rests upon the defendant.

Service of notice

42. A notice or document required by this Act to be served or delivered may be served or delivered personally or by prepaid first class mail addressed to the person to whom notice is to be given at the person's last known address and, where notice is served or delivered by mail, the service or delivery shall be deemed to have been made on the tenth day after the day of mailing unless the person to whom notice is given establishes that the person, acting in good faith, through absence, accident, illness or other cause beyond the person's control, did not receive the notice, or did not receive the notice until a later date.

Registrar's certificate as evidence

43. Any statement containing information from the records required to be kept by the Registrar under this Act, purporting to be certified by the Registrar under the seal of the Association, is admissible in evidence in all courts as proof in the absence of evidence to the contrary of the facts stated therein without proof of the appointment or signature of the Registrar and without proof of the seal.

Immunity

44.—(1) No action or other proceeding for damages shall be instituted against the Association, a committee of the Association or a member of the Association or committee, or an officer, employee, agent or appointee of the Association for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

(2) Every member of the Council and every officer, member or employee of the Association, and his or her heirs, executors and administrators, and estate and effects, respectively, may, with the consent of the Association, given at any meeting of the members of the Association, from time to time and at all times, be indemnified and saved harmless out of the funds of the Association, from and against,

Councillor indemnified in suits respecting execution of office

- (a) all costs, charges and expenses whatsoever that he or she sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him or her, in or about the execution of the duties of his or her office, employment or appointment; and
- (b) all other costs, charges and expenses that he or she sustains or incurs in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by his or her own wilful neglect or default.

45.—(1) The Council shall make a report annually to the Minister containing such information as the Minister requires.

Annual report

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Idem

46.—(1) The *Corporations Act* does not apply in respect of the Association except for the following sections of that Act which shall apply with necessary modifications in respect of the Association:

Application of R.S.O. 1980, c. 95

1. Section 81 (liability for wages).
2. Section 94 (auditors) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.
3. Subsection 95 (1) (auditor's qualifications) and, for the purpose, the subsection shall be deemed not to include,
 - i. the exception as provided in subsection 95 (2), and
 - ii. the reference to an affiliated company.

4. Section 96 (auditor's functions).
5. Subsection 97 (1), exclusive of clause 97 (1) (b), (auditor's report) and, for the purpose, the Association shall be deemed to be a private company.
6. Subsection 97 (3) (auditor's report).
7. Section 122 (liability of members).
8. Section 276 (holding of land) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.
9. Section 280 (making contracts).
10. Section 281 (power of attorney).
11. Section 282 (authentication of documents) except in respect of information from the records required to be kept by the Registrar.
12. Section 292 (validity of acts of directors).
13. Section 297 (directions by a court as to holding a meeting).
14. Section 299 (minutes of meetings).
15. Section 302 (books of account).
16. Section 303 (untrue entries) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.
17. Section 304 (place of keeping and the inspection of records) and, for the purpose,
 - i. the section shall be deemed not to refer to sections 41 and 43 of that Act, and
 - ii. the Minister shall be deemed to be the Minister referred to in the section.
18. Section 305 (inspection of records) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.
19. Section 310 (investigations and audits).

20. Section 323 (evidence of by-laws and certificates of amounts due).
21. Section 329 (removal of proceedings into the Supreme Court).
22. Section 330 (appeals).
23. Section 331 (untrue statements) and, for the purpose,
 - i. the section shall be deemed not to refer to regulations made under that Act, and
 - ii. the Minister and the Deputy Minister to the Minister shall be deemed to be the Minister and the Deputy Minister referred to in the section.
24. Section 333 (orders by the court) and, for the purpose, the section shall be deemed not to refer to creditors.

(2) For the purposes of subsection (1), a member of the Association shall be deemed to be a shareholder. Interpretation

47.—(1) The *Surveyors Act*, being chapter 492 of the Revised Statutes of Ontario, 1980, is repealed. Repeal

(2) Section 8 of the *Mobility Rights Statute Law Amendment Act, 1985*, being chapter 5, is repealed. Idem

(3) A reference in any Act or regulation to a surveyor or an Ontario land surveyor registered under the *Surveyors Act* shall be deemed to be a reference to a member of the Association licensed to engage in the practice of cadastral surveying. References
R.S.O. 1980,
c. 492

(4) A reference in any Act or regulation to the *Surveyors Act* shall be deemed to be a reference to this Act. Idem

48. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

49. The short title of this Act is the *Surveyors Act, 1987*. Short title

Bill 127

(Chapter 6
Statutes of Ontario, 1987)

An Act to revise the Surveyors Act

The Hon. V. Kerrio
Minister of Natural Resources



<i>1st Reading</i>	July 10th, 1986
<i>2nd Reading</i>	February 3rd, 1987
<i>3rd Reading</i>	February 11th, 1987
<i>Royal Assent</i>	February 12th, 1987

Bill 127

1987

An Act to revise the Surveyors Act

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Section

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

"Association" means Association of Ontario Land Surveyors;

"by-laws" means by-laws made under this Act;

“certificate of authorization” means certificate of authorization issued under this Act to provide to the public services that are part of the practice of cadastral surveying;

“certificate of registration” means certificate of registration issued under this Act authorizing the holder to hold himself out as a member of the Association;

“Council” means Council of the Association;

“graphic representation” means a representation produced by an electrical, electronic, photographic or printing method and includes a representation produced on a video display terminal;

“licence” means licence issued under this Act to engage in the practice of cadastral surveying;

“licensed”, in relation to a person, means the person is the holder of a licence;

“Minister” means the Minister of Natural Resources or such other member of the Executive Council as is designated by the Lieutenant Governor in Council;

“practice of cadastral surveying” means advising on, reporting on, conducting or supervising the conducting of surveys to establish, locate, define or describe lines, boundaries or corners of parcels of land or land covered with water;

“practice of professional land surveying” means the determination of natural and man-made features of the surface of the earth and the storage and representation of such features on a chart, map, plan or graphic representation, and includes the practice of cadastral surveying;

“Registrar” means Registrar of the Association;

“regulations” means regulations made under this Act.

Association

2.—(1) The Association of Ontario Land Surveyors, a body corporate, is continued as a corporation without share capital.

Principal
object

(2) The principal object of the Association is to regulate the practice of professional land surveying and to govern its members and holders of certificates of authorization in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected.

(3) For the purpose of carrying out its principal object, the Association has the following additional objects: Additional
objects

1. To establish, maintain and develop standards of knowledge and skill among its members.
2. To establish, maintain and develop standards of qualification and practice for the practice of professional land surveying.
3. To establish, maintain and develop standards of professional ethics among its members.
4. To promote public awareness of the role of the Association.
5. To perform such other duties and exercise such other powers as are imposed or conferred on the Association by or under any Act.

3.—(1) The Council of the Association is continued and shall be the governing body and board of directors of the Association and shall manage and administer its affairs. Council

(2) The Council shall be composed of,

Composition
of Council

- (a) six persons who are members of the Association and who are elected by the members of the Association as provided by the regulations;
- (b) the president and the vice-president, each of whom shall be elected annually by and from among the members of the Association as provided by the regulations;
- (c) the immediate past president;
- (d) the Surveyor General;
- (e) two persons who are not members of the governing body of a self-regulating licensing body under any other Act or licensed under this Act and who are appointed by the Lieutenant Governor in Council; and
- (f) one person who is not licensed under this Act and who is a barrister and solicitor of at least ten years standing in Ontario and who is appointed by the Lieutenant Governor in Council.

Term of appointed member	(3) A person appointed under clause (2) (e) or (f) shall be appointed for a term of not more than three years.
Reappointment	(4) A person appointed under clause (2) (e) or (f) may be reappointed for one or more terms of not more than three years each.
Remuneration of appointed member	(5) A person appointed under clause (2) (e) or (f) shall be paid, out of the moneys appropriated therefor by the Legislature, such expenses and remuneration as are determined by the Lieutenant Governor in Council.
Idem	(6) No person shall be elected or appointed to the Council unless he or she is a Canadian citizen.
Qualifications to vote	(7) Every member of the Association who is not in default of payment of the annual fee prescribed by the by-laws is qualified to vote at an election of members of the Council.
Registrar and staff	(8) The Council shall appoint during pleasure a Registrar and may appoint one or more deputy registrars who shall have the powers of the Registrar for the purposes of this Act, and may appoint such other persons as are from time to time necessary or desirable in the opinion of the Council to perform the work of the Association.
Quorum	(9) A majority of the members of the Council constitutes a quorum.
Vacancies	(10) Where one or more vacancies occur in the membership of the Council, the members remaining in office constitute the Council so long as their number is not fewer than a quorum.
Filling of vacancy	(11) A vacancy on the Council caused by the death, resignation, removal or incapacity to act of an elected member of the Council shall be filled by a member of the Association, (a) where a quorum of the Council remains in office, appointed by the majority of the Council, and the member so appointed shall be deemed to be an elected member of the Council; or (b) where no quorum of the Council remains in office, elected in accordance with the regulations, and the member so appointed or elected shall hold office for the unexpired portion of the term of office of the member whose office he or she is elected or appointed to fill.
Meetings of Council	(12) The Council shall meet at least four times a year.

(13) The members of the Council of The Association of Ontario Land Surveyors who were elected or appointed and in office immediately before this Act comes into force shall continue in office and shall be deemed to be elected or appointed, as the case requires, under subsection (2) until the expiration of the term for which they were elected or appointed or until the office otherwise becomes vacant.

Continuation
of Council
members

4. The Association shall hold an annual meeting of the members of the Association not more than fifteen months after the holding of the last preceding annual meeting.

Annual
meetings

5.—(1) Every person licensed by the Association is a member of the Association, subject to any term, condition or limitation to which the licence is subject.

Membership

(2) Every person who is the holder of a certificate of registration is a member of the Association subject to any term, condition or limitation to which the certificate of registration is subject.

Idem

(3) A member may resign his or her membership by filing with the Registrar a resignation in writing, and the member's licence or certificate of registration is thereupon cancelled, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of his or her professional conduct while a member.

Resignation
of
membership

6. In addition to his or her other powers and duties under this Act, the Minister may,

Powers
of
Minister

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Act and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

7.—(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

Regulations

1. defining constituencies and prescribing the number of representatives on the Council of each constituency;

R.S.O. 1980,
c. 484

2. respecting and governing the qualifications, nomination, election and term or terms of office of the members to be elected to the Council, and controverted elections;
3. prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;
4. respecting the composition of the committees required by this Act, other than the Complaints Committee and the Discipline Committee, the mechanism of the appointment of members of the committees and procedures ancillary to those specified in this Act in respect of any committee;
5. respecting matters of practice and procedure before committees required under this Act not inconsistent with this Act and the *Statutory Powers Procedure Act*;
6. prescribing the quorums of the committees required by this Act, except the Complaints Committee and the Discipline Committee;
7. prescribing classes of persons whose interests are related to those of the Association and the privileges of persons in the classes in relation to the Association;
8. respecting any matter ancillary to the provisions of this Act with regard to the issuing, suspension and revocation of licences, certificates of authorization and certificates of registration, and the requirements and qualifications therefor, including but not limited to regulations respecting,
 - i. the scope, standards and conduct of any examination set or approved by the Council as a licensing requirement or as a requirement for a certificate of registration,
 - ii. the curricula and standards of professional training programs offered by the Council,
 - iii. the academic, experience and other requirements for admission into professional training programs,

- iv. the academic and experience requirements for the issuance of a licence, and
 - v. the academic and experience requirements for the issuance of a certificate of registration;
- 9. prescribing terms and conditions of licences, certificates of authorization or certificates of registration;
 - 10. prescribing forms of applications for licences, certificates of authorization and certificates of registration and requiring their use;
 - 11. for the purposes of section 14, prescribing a proportion greater than 70 per cent of the shares of corporations that engage in the business of providing services that are within the practice of cadastral surveying;
 - 12. requiring the making of returns of information in respect of the holdings of shares and the officers and directors of corporations that apply for or hold certificates of authorization, and prescribing and requiring the use of forms of such returns;
 - 13. requiring and governing the signing and sealing of documents and drawings by members of the Association or by members entered on a specific register of the Association, specifying the forms of seals and respecting the issuance and ownership of seals;
 - 14. requiring the making of returns of information by members of the Association and holders of certificates of authorization in respect of names, addresses, telephone numbers, associates, partners, employees, directors, officers and shareholdings, and, if the corporation engages in the practice of cadastral surveying, the name of the member of the Association who directs the practice of cadastral surveying by the corporation, and in respect of professional liability insurance, and prescribing and requiring the use of forms of such returns;
 - 15. governing the use of names and designations in the practice of professional land surveying by members of the Association and holders of certificates of authorization;

16. providing for the maintenance and inspection of registers of persons permitted to engage in the practice of professional land surveying;
17. prescribing and governing standards of practice and performance standards for the practice of professional land surveying;
18. providing for the setting of schedules of suggested fees for the practice of professional land surveying and for the publication of the schedules;
19. respecting the advertising of the practice of professional land surveying;
20. prescribing a code of ethics;
21. defining professional misconduct for the purposes of this Act;
22. providing for the designation of members of the Association as specialists, prescribing the qualifications and requirements for designation as a specialist, providing for the suspension or revocation of such a designation and for the regulation and prohibition of the use of the designation by members of the Association;
23. providing for inspection programs related to the practice of professional land surveying, including programs for the inspection of records, other than financial records, of members of the Association and holders of certificates of authorization;
24. providing for the compilation of statistical data on the supply, distribution and professional activities of members of the Association and holders of certificates of authorization and on remuneration for the practice of professional land surveying and requiring members of the Association and holders of certificates of authorization to provide the information necessary to compile such statistics, but persons engaged in the administration of this Act shall maintain secret the names of persons providing the information as a matter that comes to their knowledge in the course of their duties under this Act;
25. requiring members of the Association or holders of certificates of authorization, or both of them, to obtain and to maintain insurance against liability

that may be incurred in the practice of professional land surveying, respecting the terms and conditions and prescribing the minimum amounts of such insurance, requiring such members and holders to provide to the Registrar proof of the insurance coverage, and respecting the form of the proof and the times when the proof shall be provided;

26. exempting any class of members or holders of certificates of authorization from the requirement to be insured in respect of professional liability, and classifying members or holders of certificates of authorization for the purpose of such exemption;
27. requiring members of the Association or holders of certificates of authorization, or both, to inform the Registrar in respect of claims or impending claims against them for professional liability;
28. prohibiting or regulating the practice of professional land surveying where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
29. providing for a program of continuing education of members of the Association;
30. respecting the duties and authority of the Registrar;
31. prescribing qualifications and requirements that shall be complied with to obtain the reinstatement of a licence, certificate of registration or a certificate of authorization that was cancelled by the Registrar;
32. classifying and exempting any class of holders of licences, certificates of registration or certificates of authorization from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable;
33. prescribing any matter referred to in this Act as prescribed by the regulations.

(2) The Council shall not request that the Lieutenant Governor in Council approve a regulation made by the Council until the regulation is confirmed by the members of the Association.

Confirmation
by members

Voting

(3) The members of the Association may confirm a regulation by a majority of those voting,

- (a) at an annual meeting;
- (b) at a general meeting of the Association called for the purpose; or
- (c) by means of a vote conducted by mail.

Distribution
of
regulations

(4) A copy of each regulation made under subsection (1),

- (a) shall be forwarded to each member of the Association and to each holder of a certificate of authorization; and
- (b) shall be available for public inspection in the office of the Association.

Regulations
by
Lieutenant
Governor in
Council

(5) Where the Minister requests in writing that the Council make, amend or revoke a regulation under subsection (1) and the Council has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request.

Idem,
distribution

(6) Where the Lieutenant Governor in Council makes, amends or revokes a regulation under subsection (5), the Minister shall transmit a copy of the regulation, amendment or revocation to the Council and the Council shall cause the regulation, amendment or revocation to be distributed and to be made available in the same manner as a regulation made under subsection (1).

By-laws

8.—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the Association not inconsistent with this Act and the regulations and, without limiting the generality of the foregoing,

- 1. prescribing the seal of the Association;
- 2. providing for the execution of documents by the Association;
- 3. respecting banking and finance;
- 4. fixing the financial year of the Association and providing for the audit of the accounts and transactions of the Association;

5. respecting the calling, holding and conducting of meetings of the Council and the duties of members of the Council;
6. providing for meetings of the Council and committees, except in a proceeding in respect of a licence or a certificate of authorization or a certificate of registration, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and a member of the Council or committee participating in a meeting in accordance with such by-law shall be deemed to be present in person at the meeting;
7. providing that the Council or a committee may act upon a resolution consented to by the signatures of all members of the Council or the committee except in a proceeding in respect of a licence or a certificate of authorization or a certificate of registration, and a resolution so consented to in accordance with such a by-law is as valid and effective as if passed at a meeting of the Council or the committee duly called, constituted and held for that purpose;
8. respecting the calling, holding and conducting of meetings of the membership of the Association;
9. prescribing the remuneration of the members of the Council and committees, other than persons appointed by the Lieutenant Governor in Council, and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
10. delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
11. prescribing the positions and qualifications of officers of the Association, providing procedures for their selection and the filling of vacancies in the offices of the Association, and prescribing the duties of officers of the Association;
12. providing for the appointment of inspectors for the purposes of this Act;
13. prescribing forms and providing for their use;

14. providing procedures for the making, amending and revoking of the by-laws;
15. respecting management of the property of the Association;
16. providing for the appointment, composition, powers and duties of additional or special committees;
17. respecting the application of the funds of the Association and the investment and reinvestment of any of its funds not immediately required, and for the safekeeping of its securities;
18. respecting the borrowing of money by the Association and the giving of security therefor;
19. respecting membership of the Association in other organizations, the payment of annual assessments and provision for representatives at meetings;
20. authorizing the making of grants for any purpose that may tend to advance knowledge of professional land surveying education, or maintain or improve the standards of practice in professional land surveying or support and encourage public information and interest in the role of professional land surveying in society;
21. respecting scholarships, bursaries and prizes related to the study of professional land surveying;
22. prescribing the amounts of and requiring the payment of annual fees by members of the Association and holders of certificates of authorization and by students and members of related classes recognized by the Association, and fees for licensing, certification, registration, examinations and continuing education, including penalties for late payment, fees in respect of the Association's quality control program for plans of survey and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
23. providing for the entering into of arrangements by the Association for its members and holders of certificates of authorization respecting indemnity for professional liability and requiring the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members of the

Association and holders of certificates of authorization in respect of professional liability;

24. respecting the Compensation Fund and prescribing the amount of the levy to be paid to the Association for the Fund and exempting any class of members from all or any part of such levy;
25. providing for the payment to the Association by any member of the cost of any investigation or audit of the member's books, records, accounts and transactions;
26. providing for the establishment of group insurance plans, other than for professional liability, in which members of the Association may participate on a voluntary basis;
27. regarding such other matters as are entailed in carrying on the business of the Association and are not included in section 7.

(2) A by-law passed by the Council is not effective until confirmed by the members of the Association. Confirmation
by members

(3) The members of the Association may confirm a by-law by a majority of those voting, Voting

- (a) at an annual meeting;
- (b) at a general meeting of the Association called for the purpose; or
- (c) by means of a vote conducted by mail.

(4) A copy of the by-laws made under subsection (1) and amendments thereto, Distribution
of by-laws

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each member; and
- (c) shall be available for public inspection in the office of the Association.

9.—(1) The Council shall establish and appoint as provided in this Act the following committees: Committees

- (a) Executive Committee;

- (b) Academic and Experience Requirements Committee;
- (c) Registration Committee;
- (d) Complaints Committee;
- (e) Discipline Committee;
- (f) Fees Mediation Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of a committee, the members remaining in office constitute the committee so long as their number is not fewer than a quorum of the committee.

Executive Committee

10.—(1) The Council may delegate to the Executive Committee the authority to exercise any power or perform any duty of the Council, other than to make, amend or revoke a regulation or a by-law.

Urgent matters

(2) Subject to ratification by the Council at its next ensuing meeting, the Executive Committee may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or a by-law.

Cadastral surveying, licence required

11.—(1) No person shall engage in the practice of cadastral surveying or hold himself or herself out as engaging in the practice of cadastral surveying unless licensed under this Act.

Certificate of authorization

(2) No person shall provide to a member of the public a service that is part of the practice of cadastral surveying except under and in accordance with a certificate of authorization.

Proof of practice

(3) For the purposes of subsections (1) and (2), proof of the performance of one act in the practice of cadastral surveying on one occasion is sufficient to establish engaging in the practice of cadastral surveying.

Certificate of registration

(4) No person shall hold himself or herself out as the holder of a certificate of registration unless such person is the holder of a certificate of registration issued under this Act.

Issuance of licence

12.—(1) The Registrar shall issue a licence to a natural person who applies therefor in accordance with the regulations and,

- (a) is a citizen of Canada or has the status of a permanent resident of Canada;
- (b) is not less than eighteen years of age;
- (c) has complied with the academic requirements specified in the regulations for the issuance of the licence and has passed such examinations as the Council has set or approved in accordance with the regulations or is exempted therefrom by the Council;
- (d) has complied with the experience requirements specified in the regulations for the issuance of the licence; and
- (e) is of good character.

(2) The Registrar may refuse to issue a licence to an applicant where the Registrar is of the opinion, upon reasonable and probable grounds, that the past conduct of the applicant affords grounds for belief that the applicant will not engage in the practice of cadastral surveying in accordance with the law and with honesty and integrity.

Grounds for refusal to issue licence

(3) The Registrar, on his or her own initiative, may refer and on the request of an applicant shall refer the application of the applicant for the issuance of a licence to the Academic and Experience Requirements Committee for a determination as to whether or not the applicant has met the academic requirements or the experience requirements or both prescribed by the regulations for the issuance of the licence.

Referral to Committee on Academic and Experience Requirements

(4) The Committee may direct the Registrar to issue a licence subject to such conditions in respect of completion by the applicant of such academic requirements or experience requirements as are specified by the Committee.

Direction by Committee

(5) A determination or direction by the Committee under subsection (3) or (4) is final and is binding on the Registrar and on the applicant.

Determination by Committee

(6) The Committee shall receive written submissions from an applicant but is not required to hold or to afford to any person a hearing or an opportunity to make oral submissions before making a determination under subsection (3).

Hearing

(7) The Registrar shall give notice to the applicant of a determination or direction by the Committee under subsection (3) or (4) and, if the applicant is rejected, the notice shall detail the specific requirements that the applicant must meet.

Notice of determination or direction

Corporation

13. A corporation that holds a certificate of authorization may provide services that are within the practice of cadastral surveying.

Issuance of
certificate
of
authorization

14.—(1) The Registrar shall issue a certificate of authorization to a licensed member of the Association who applies therefor in accordance with the regulations and who meets the requirements and qualifications prescribed by the regulations for the issuance of the certificate of authorization.

Issuance of
certificate
of
authorization
to
corporation

(2) The Registrar shall issue a certificate of authorization to a corporation that applies therefor in accordance with the regulations and meets the following requirements:

1. The primary function of the corporation must be to engage in the business of providing services that are within the practice of cadastral surveying.
2. At least one director or full-time employee of the corporation must be a licensed member of the Association who holds a certificate of authorization and who agrees to personally supervise and direct the practice of cadastral surveying for the corporation.
3. Not less than 70 per cent of each class of shares of the corporation must be owned by and registered in the name of one or more licensed members of the Association.

Issuance of
certificate
of
authorization

(3) The Registrar shall issue a certificate of authorization to a partnership of licensed members of the Association that applies therefor in accordance with the regulations and that proposes to engage in the practice of cadastral surveying.

Partnership
of
corporations

(4) The Registrar shall issue a certificate of authorization to a partnership of corporations that applies therefor in accordance with the regulations.

Past
conduct

(5) The Registrar may refuse to issue or may suspend or revoke a certificate of authorization where,

- (a) the Registrar is of the opinion, upon reasonable and probable grounds, that the past conduct of the applicant for or the holder of the certificate of authorization or the past conduct of a person who is in a position of authority or responsibility in the operation of the business of the applicant for or the holder of the certificate of authorization affords grounds for the belief that the applicant or holder will not engage in the business of providing services

that are within the practice of cadastral surveying in accordance with the law and with honesty and integrity; or

- (b) the holder of the certificate of authorization does not meet the requirements or the qualifications for the issuance of the certificate of authorization set out in the regulations; or
- (c) there is a breach of a condition of the certificate of authorization.

(6) The Registrar may refuse to issue a certificate of authorization to a licensed member of the Association or may revoke a certificate of authorization held by a licensed member of the Association where the Registrar is of the opinion, upon reasonable and probable grounds, that the member has not engaged in the practice of cadastral surveying during the period of five years preceding the date of the refusal or revocation.

Refusal or
revocation

15.—(1) A natural person, a partnership or a corporation that engages in the business of providing services that are within the practice of cadastral surveying under the authority of a certificate of authorization shall provide the services only under the personal supervision and direction of a licensed member of the Association.

Supervision
by Ontario
land surveyor

(2) A member of the Association who personally supervises and directs the providing of services within the practice of cadastral surveying by a holder of a certificate of authorization or who assumes responsibility for and supervises the practice of cadastral surveying related to the providing of services by a holder of a certificate of authorization is subject to the same standards of professional conduct and competence in respect of the services and the related practice of cadastral surveying as if the services were provided or the practice of cadastral surveying was engaged in by the member of the Association.

Professional
responsi-
bility of
supervising
Ontario land
surveyor

16.—(1) The Registrar shall issue a certificate of registration in a branch of professional land surveying to an applicant therefor who meets the requirements and qualifications prescribed by the regulations in relation to the branch.

Certificate
of
registration

(2) Subsection (1) applies in respect of professional land surveying in the branches of photogrammetry, geodesy and hydrography and such other branches as are prescribed by the regulations but does not apply in respect of cadastral surveying.

Idem

Hearing by
Registration
Committee

17.—(1) Where the Registrar proposes,

- (a) to refuse an application for a licence, a certificate of authorization or a certificate of registration;
- (b) to revoke a certificate of authorization; or
- (c) to issue a licence, a certificate of authorization or a certificate of registration subject to terms, conditions or limitations,

the Registrar shall serve notice of the proposal, together with written reasons therefor, on the applicant.

Exceptions

(2) Subsection (1) does not apply in respect of a refusal to issue a licence or a certificate of registration to a person who was previously licensed or who previously held a certificate of registration and whose licence or certificate of registration was suspended or revoked as a result of a decision of the Discipline Committee.

Idem

(3) Subsection (1) does not apply in respect of a refusal to issue a certificate of authorization to a person or a partnership that previously held a certificate of authorization and whose certificate of authorization was suspended or revoked as a result of a decision of the Discipline Committee.

Notice

(4) A notice under subsection (1) shall state that the applicant is entitled to a hearing by the Registration Committee if the applicant delivers, within thirty days after the notice under subsection (1) is served on the applicant, notice in writing requiring a hearing by the Registration Committee, and the applicant may so require such a hearing.

Power of
Registrar
where no
hearing

(5) Where the applicant does not require a hearing by the Registration Committee in accordance with subsection (4), the Registrar may carry out the proposal stated in the notice under subsection (1).

Hearing by
Registration
Committee

(6) Where an applicant requires a hearing by the Registration Committee in accordance with subsection (1), the Registration Committee shall appoint a time for, give notice of and shall hold the hearing.

Disability
of member

(7) Where the Registration Committee commences a hearing and a member of the Registration Committee becomes unable to act, the remaining members may complete the hearing notwithstanding the absence of the member who is unable to act.

(8) Where a proceeding is commenced before the Registration Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated other than for cause before the proceeding is disposed of but after evidence is heard, the member shall be deemed to remain a member of the Registration Committee for the purpose of completing the disposition of the proceeding in the same manner as if the term of office had not expired or been terminated.

Continuation
on expiry
of Committee
membership

(9) Following a hearing under this section in respect of a proposal by the Registrar in relation to a licence, the Registration Committee by order may,

Powers of
Registration
Committee
re licences

- (a) where the Committee is of the opinion upon reasonable grounds that the applicant meets the requirements and qualifications of this Act and the regulations and will engage in the practice of cadastral surveying with competence and integrity, direct the Registrar to issue a licence to the applicant;
- (b) where the Committee is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications of this Act and the regulations,
 - (i) direct the Registrar to refuse to issue a licence to the applicant, or
 - (ii) where the committee is of the opinion upon reasonable grounds that the applicant will engage in the practice of cadastral surveying with competence and integrity, exempt the applicant from any of the requirements and qualifications of this Act and the regulations and direct the Registrar to issue a licence; or
- (c) where the Committee is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the practice of cadastral surveying with competence and integrity,
 - (i) require the applicant to take and successfully complete such examinations as the Registration Committee may set or approve and to pay such fees therefor as the Registration Committee fixes,

- (ii) require the applicant to take such additional training as the Registration Committee specifies, or
- (iii) direct the Registrar to issue a licence subject to such terms, conditions and limitations as the Registration Committee specifies.

Powers of
Registration
Committee re
certificates of
authorization

(10) Following a hearing under this section in respect of a proposal by the Registrar in relation to a certificate of authorization, the Registration Committee by order may,

- (a) where the Committee is of the opinion upon reasonable grounds that the applicant meets the requirements and qualifications of this Act and the regulations and will engage in the business of providing services that are within the practice of cadastral surveying with competence and integrity, direct the Registrar to issue a certificate of authorization to the applicant or to not revoke the certificate of authorization held by the applicant, as the case requires;
- (b) where the Committee is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications of this Act and the regulations,
 - (i) direct the Registrar to refuse to issue a certificate of authorization to the applicant or to revoke the certificate of authorization held by the applicant, or
 - (ii) where the Committee is of the opinion upon reasonable grounds that the applicant will engage in the business of providing services that are within the practice of cadastral surveying with competence and integrity, exempt the applicant from any of the requirements and qualifications of this Act and the regulations and direct the Registrar to issue a certificate of authorization to the applicant or to not revoke the certificate of authorization held by the applicant, as the case requires; or
- (c) where the Committee is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the business of providing services that are within the practice of cadastral surveying with competence and integrity, direct

the Registrar to issue a certificate of authorization subject to such terms, conditions and limitations as the Registration Committee specifies.

(11) Following a hearing under this section in respect of a proposal by the Registrar in relation to a certificate of registration, the Registration Committee by order may,

Powers of
Registration
Committee re
certificates
of
registration

- (a) where the Committee is of the opinion upon reasonable grounds that the applicant meets the requirements and qualifications prescribed by the regulations, direct the Registrar to issue a certificate of registration to the applicant or to not revoke the certificate of registration held by the applicant, as the case requires;
- (b) where the Committee is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications prescribed by the regulations,
 - (i) direct the Registrar to refuse to issue a certificate of registration to the applicant or to revoke the certificate of registration held by the applicant, as the case requires, or
 - (ii) where the Committee is of the opinion upon reasonable grounds that the applicant will engage in the practice of professional surveying with competence and integrity, exempt the applicant from any of the requirements and qualifications prescribed by the regulations and direct the Registrar to issue a certificate of registration to the applicant or to not revoke the certificate of registration held by the applicant, as the case requires; or
- (c) where the Committee is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the practice of professional surveying with competence and integrity, direct the Registrar to issue a certificate of registration to the applicant subject to such terms, conditions and limitations as the Registration Committee specifies.

(12) The Registration Committee may extend the time for the giving of notice requiring a hearing by an applicant under this section before or after the expiration of such time where it is satisfied that there are apparent grounds for granting

Extension
of time for
requiring
hearing

relief to the applicant following upon a hearing and that there are reasonable grounds for applying for the extension, and the Registration Committee may give such directions as it considers proper consequent upon the extension.

Parties

(13) The Registrar and the applicant who has required the hearing are parties to proceedings before the Registration Committee under this section.

Opportunity
to show
compliance

(14) The applicant shall be given a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements in respect of the licence, the certificate of authorization or the certificate of registration, as the case requires.

Examination
of
documentary
evidence

(15) A party to proceedings under this section shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members
holding
hearing
not to have
taken part
in investi-
gation, etc.

(16) Members of the Registration Committee holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his or her representative except upon notice to and opportunity for both parties to participate, but the Registration Committee may seek legal advice from a person who is not counsel in the proceedings and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording
of evidence

(17) The oral evidence taken before the Registration Committee at a hearing shall be recorded and, if so required, copies of a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Only
members
at hearing
to participate
in decision

(18) No member of the Registration Committee shall participate in a decision of the Registration Committee following upon a hearing unless the member was present throughout the hearing and heard the evidence and argument of the parties.

Release of
documentary
evidence

(19) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person by the Registration Committee within a reasonable time after the matter in issue has been finally determined.

18.—(1) The Registrar shall maintain registers in which is entered every person who is a member of the Association and every holder of a certificate of authorization. Registers

(2) The Registrar shall note in the registers the terms, conditions and limitations attached to each licence, certificate of authorization and certificate of registration. Notation as to terms, conditions, limitations

(3) The Registrar shall note in the registers every revocation, suspension and cancellation or termination of a licence, certificate of authorization or certificate of registration. Notation as to revocation, suspension, etc.

(4) The Registrar shall note in the registers such other information as the Registration Committee or the Discipline Committee directs. Notation as to other information

(5) Any person has the right to inspect during normal business hours the registers maintained by the Registrar. Inspection

(6) The Registrar shall provide to any person, upon payment of a reasonable charge therefor, a copy of any part of the registers maintained by the Registrar. Copies

19.—(1) Every member of the Association under the *Surveyors Act*, being chapter 492 of the Revised Statutes of Ontario, 1980, immediately before this Act comes into force shall be deemed to be licensed in the same manner as if issued a licence under this Act. Continuation of memberships

(2) Every certificate of authorization issued under the said Act and in effect immediately before this Act comes into force continues in the same manner as if issued under this Act. Continuation of certificates of authorization

(3) Subsection (2) applies in the case of a corporation notwithstanding that the corporation does not comply with the requirement that not less than 70 per cent of each class of shares of the corporation must be owned by and registered in the name of one or more licensed members of the Association, if a majority of each class of shares of the corporation is owned by and registered in the name of one or more members of the Association. Idem, corporations

20.—(1) The Registrar may cancel a licence, a certificate of authorization or a certificate of registration for non-payment of any fee prescribed by the by-laws after giving the member or the holder of the certificate of authorization at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of his or her professional conduct while a member or holder. Cancellation for default of fees

Reinstatement

(2) A person who was a member or a holder of a certificate of authorization whose licence, certificate of authorization or certificate of registration was cancelled by the Registrar under subsection (1) is entitled to have the licence, certificate of authorization or certificate of registration reinstated upon compliance with the requirements and qualifications prescribed by the regulations.

Complaints Committee

21.—(1) The Complaints Committee shall be composed of,

- (a) at least one member of the Council who was elected to the Council;
- (b) at least one member of the Council who was appointed to the Council by the Lieutenant Governor in Council; and
- (c) such other members of the Association as may be appointed by the Council.

Idem

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

Chairman

(3) The Council shall name one member of the Complaints Committee to be chairman.

Quorum

(4) Three members of the Complaints Committee, of whom one shall be a person elected to the Council, constitute a quorum.

Duties of Complaints Committee

22.—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the Association regarding the conduct or actions of any member of the Association but no action shall be taken by the Committee under subsection (2) unless,

- (a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations the member may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it receives may, Idem

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee;
- (b) direct that the matter not be referred under clause (a); or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations or by-laws.

(3) The Committee shall give its decision in writing to the Registrar for the purposes of subsection (4) and, where the decision is made under clause (2) (b), its reasons therefor. Decision and reasons

(4) The Registrar shall send to the complainant and to the person complained against by prepaid first class mail a copy of the written decision made by the Complaints Committee and its reasons therefor, if any, together with notice advising the complainant of his or her right to apply to the Complaints Review Councillor under section 24. Notice

(5) The committee is not required to hold a hearing or to afford to any person an opportunity for a hearing or an opportunity to make oral submissions before making a decision or giving a direction under this section. Hearing

23.—(1) There shall be a Complaints Review Councillor who shall be appointed by and from among the members of the Council appointed by the Lieutenant Governor in Council. Complaints Review Councillor

(2) The Complaints Review Councillor is not eligible to be a member of the Complaints Committee or the Fees Mediation Committee. Idem

(3) The Complaints Review Councillor may examine from time to time the procedures for the treatment of complaints by the Association and, as mentioned in section 24, may review the treatment by the Association of individual complaints. Examination and review by Complaints Review Councillor

(4) In an examination or review in respect of the Association, the Complaints Review Councillor shall not inquire into the merits of any particular complaint made to the Association. Complaints Review Councillor not to inquire into merit of complaint

Discretionary
power of
Complaints
Review
Councillor

(5) The Complaints Review Councillor in his or her discretion may decide in a particular case not to make a review or not to continue a review in respect of the Association where,

- (a) the review is or would be in respect of the treatment of a complaint that was disposed of by the Association more than twelve months before the matter came to the attention of the Complaints Review Councillor; or
- (b) in the opinion of the Complaints Review Councillor,
 - (i) the application to the Complaints Review Councillor is frivolous or vexatious or is not made in good faith, or
 - (ii) the person who has made application to the Complaints Review Councillor has not a sufficient personal interest in the subject-matter of the particular complaint.

Notice

(6) Before commencing an examination or review in respect of the Association, the Complaints Review Councillor shall inform the Association of his or her intention to commence the examination or review.

Office
accommodation

(7) The Council shall provide to the Complaints Review Councillor such accommodation and support staff in the offices of the Association as are necessary to the performance of the powers and duties of the Complaints Review Councillor.

Privacy

(8) Every examination or review by the Complaints Review Councillor in respect of the Association shall be conducted in private.

Receipt
of
information

(9) In conducting an examination or review in respect of the Association, the Complaints Review Councillor may hear or obtain information from any person and may make such inquiries as the Complaints Review Councillor thinks fit.

Hearing
not
required

(10) The Complaints Review Councillor is not required to hold or to afford to any person an opportunity for a hearing in relation to an examination, review or report in respect of the Association.

Duty to
furnish
information

(11) Every person who is,

- (a) a member of the Council;

- (b) an officer of the Association;
- (c) a member of a committee of the Association; or
- (d) an employee of the Association,

shall furnish to the Complaints Review Councillor such information regarding any proceedings or procedures of the Association in respect of the treatment of complaints made to the Association as the Complaints Review Councillor from time to time requires, and shall give the Complaints Review Councillor access to all records, reports, files and other papers and things belonging to or under the control of the Association or any of such persons and that relate to the treatment by the Association of complaints or any particular complaint.

(12) The Complaints Review Councillor shall make a report following upon each examination or review by him or her in respect of the Association.

Report by
Complaints
Review
Councillor

(13) Where the report follows upon an examination of the treatment of complaints by the Association, the Complaints Review Councillor shall transmit the report to the Council.

Report
following
upon
examination

(14) Where the report follows upon a review as to the treatment of a complaint by the Association, the Complaints Review Councillor shall transmit the report to the Council, to the complainant and to the person complained against.

Report
following
upon
review

(15) The Complaints Review Councillor may transmit a report following upon an examination or review to the Minister where, in the opinion of the Complaints Review Councillor, the report should be brought to the attention of the Minister.

Report to
Minister

(16) The Complaints Review Councillor may include in a report following upon an examination or review his or her recommendations in respect of the procedures of the Association, either generally or with respect to the treatment of a particular complaint.

Recommendations

(17) The Council shall consider each report, and any recommendations included in the report, transmitted to it by the Complaints Review Councillor and shall notify the Complaints Review Councillor of any action it has taken in consequence.

Consideration
by Council

24.—(1) Where a complaint respecting a member of the Association or a holder of a certificate of authorization has not been disposed of by the Complaints Committee within ninety days after the complaint is filed with the Registrar,

Review by
Complaints
Review
Councillor

upon application by the complainant or on his or her own initiative, the Complaints Review Councillor may review the treatment of the complaint by the Complaints Committee.

Application
to
Complaints
Review
Councillor

(2) A complainant who is not satisfied with the handling by the Complaints Committee of his or her complaint to the Committee may apply to the Complaints Review Councillor for a review of the treatment of the complaint after the Committee has disposed of the complaint.

Discipline
Committee

25.—(1) The Discipline Committee shall be composed of,

- (a) the persons appointed to the Discipline Committee by the Council from among the members of the Council elected to the Council;
- (b) one member of the Council who was appointed to the Council by the Lieutenant Governor in Council; and
- (c) the persons appointed to the Committee by the Council from among the members of the Association who have not less than ten years experience in the practice of professional land surveying.

Quorum
and votes

(2) Three members of the Discipline Committee, of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and all disciplinary decisions require the vote of a majority of the members of the Discipline Committee present at the meeting.

Disability
of
member

(3) Where the Discipline Committee commences a hearing and a member of the Discipline Committee becomes unable to act, the remaining members may complete the hearing notwithstanding the absence of the member who is unable to act.

Chairman

(4) The Council shall name one member of the Discipline Committee who is a member of and elected to the Council to be chairman.

Reference
by Council
or Executive
Committee

(5) The Council, by resolution, may direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct or incompetence on the part of a member of the Association or a holder of a certificate of authorization specified in the resolution.

Duties of
Discipline
Committee

26.—(1) The Discipline Committee shall,

- (a) when so directed by the Council or the Complaints Committee, hear and determine allegations of pro-

fessional misconduct or incompetence against a member of the Association;

(b) hear and determine matters referred to it under section 22, 25 or 35; and

(c) perform such other duties as are assigned to it by the Council.

(2) A member of the Association may be found guilty of professional misconduct by the Committee if, Professional misconduct

(a) the member has been found guilty of an offence relevant to his or her suitability to practise, upon proof of such conviction;

(b) the member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

(3) The Discipline Committee may find a member of the Association to be incompetent if in its opinion, Incompetence

(a) the member has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public the member serves of a nature or to an extent that demonstrates the member is unfit to carry out the responsibilities of a person engaged in the practice of professional land surveying; or

(b) the member or holder is suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that the member no longer be permitted to engage in the practice of professional land surveying or that his practice of professional land surveying be restricted or, in the case of a member other than a licensed member, that the membership of the member be revoked or be restricted.

(4) Where the Discipline Committee finds a member of the Association guilty of professional misconduct or incompetence it may, by order, Powers of Discipline Committee

(a) revoke the licence or certificate of registration, as the case may be, of the member;

- (b) suspend the licence or certificate of registration, as the case may be, of the member for a stated period, not exceeding twenty-four months;
- (c) accept the undertaking of the member to limit the professional work of the member or holder in the practice of professional land surveying to the extent specified in the undertaking;
- (d) impose terms, conditions and limitations on the licence or certificate of registration, as the case may be, of the member, including but not limited, in the case of a member, to the successful completion of a particular course or courses of study, as are specified by the Discipline Committee;
- (e) impose specific restrictions on the licence or certificate of registration, as the case may be, or on the certificate of authorization, including but not limited to,
 - (i) requiring the member to engage in the practice of professional land surveying only under the personal supervision and direction of another member,
 - (ii) requiring the member to not alone engage in the practice of professional land surveying,
 - (iii) requiring the member to accept periodic inspections by the Discipline Committee or its delegate of the books, accounts, records and plans of the member in connection with the member's practice,
 - (iv) requiring the member to report to the Registrar or to such committee of the Council as the Discipline Committee may specify on such matters in respect of the member's practice for such period of time, at such times and in such form, as the Discipline Committee may specify;
- (f) require that the member be reprimanded, admonished or counselled and, if considered warranted, direct that the fact of the reprimand, admonishment or counselling be recorded on the register;
- (g) revoke or suspend for a stated period of time the designation of the member by the Association as a

specialist in any branch of professional land surveying;

- (h) impose such fine as the Discipline Committee considers appropriate, to a maximum of \$5,000, to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (i) require the member to repay, waive or reduce the fee charged by the member in respect of the practice of professional land surveying related to the finding of professional misconduct or incompetence;
- (j) subject to subsection (5), in respect of orders of revocation or suspension, direct that the finding and the order of the Discipline Committee be published in an official publication of the Association in detail or in summary and either with or without including the name of the member;
- (k) fix and impose costs to be paid by the member to the Association;
- (l) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms or for such purpose as may be specified by the Discipline Committee, including but not limited to,
 - (i) the successful completion by the member of a particular course or courses of study,
 - (ii) the production to the Discipline Committee of evidence satisfactory to it that any physical or mental handicap in respect of which the penalty was imposed has been overcome,

or any combination of them.

(5) The Discipline Committee shall cause an order of the Committee revoking or suspending a licence or certificate of registration to be published, with or without the reasons therefor, in an official publication of the Association together with the name of the holder of the revoked or suspended licence, certificate of authorization or certificate of registration.

Publication
of revocation
or suspension

(6) The Discipline Committee shall cause a determination by the Committee that an allegation of professional misconduct or incompetence was unfounded to be published in an

Publication
on request

official publication of the Association, upon the request of the member against whom the allegation was made.

Costs

(7) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the Association reimburse the member for his or her costs or such portion thereof as the Discipline Committee fixes and the Association shall comply with the order.

Stay on
appeal for
incompetence

(8) Where the Discipline Committee revokes, suspends or restricts a licence or certificate of registration on the ground of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision unless the court to which the appeal is taken otherwise orders, and, where the court is satisfied that it is appropriate in the circumstances, the court may so order.

Stay on
appeal for
professional
misconduct

(9) Where the Discipline Committee revokes, suspends or restricts a licence or certificate of registration on a ground other than incompetence, the order does not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned, unless the Discipline Committee otherwise orders, and, where the Committee considers that it is appropriate for the protection of the public, the Committee may so order.

Service of
decision of
Discipline
Committee

(10) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member or holder.

Continuation
on expiry of
Committee
membership

(11) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated, other than for cause, before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if the term of office had not expired or been terminated.

Discipline
proceedings,
parties

27.—(1) In proceedings before the Discipline Committee, the Association and the member of the Association whose conduct is being investigated in the proceedings are parties to the proceedings.

Examination
of
documentary
evidence

(2) A member whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded an

opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(3) A member of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Council considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his or her representative except upon notice to and opportunity for all parties to participate, but the Discipline Committee may seek legal advice from a person who is not counsel in the proceedings and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Members holding hearing not to have taken part in investigation, etc.

(4) Notwithstanding anything in the *Statutory Powers Procedure Act*, hearings of the Discipline Committee shall be held *in camera*, but, if the party whose conduct is being investigated requests otherwise by a notice delivered to the Registrar at least five days before the day fixed for the hearing, the Discipline Committee shall conduct the hearing in public except where,

In camera
R.S.O. 1980,
c. 484

- (a) matters involving public security may be disclosed; or
- (b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

(5) The oral evidence taken before the Discipline Committee shall be recorded and, if so required, copies of a transcript thereof shall be furnished only to the parties at their own cost.

Recording of evidence

(6) Notwithstanding section 15 of the *Statutory Powers Procedure Act*, nothing is admissible in evidence before the Discipline Committee that would be inadmissible in a court in a civil case and the findings of the Discipline Committee shall be based exclusively on evidence admitted before it.

Evidence
R.S.O. 1980,
c. 484

(7) No member of the Discipline Committee shall participate in a decision of the Committee following upon a hearing unless the member was present throughout the hearing and heard the evidence and argument of the parties.

Only members at hearing to participate in decision

(8) Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the party

Release of documentary evidence

who produced them, be returned by the Committee within a reasonable time after the matter in issue has been finally determined.

Appeal
to court

28.—(1) A party to proceedings before the Registration Committee or the Discipline Committee may appeal to the Divisional Court, in accordance with the rules of court, from the decision or order of the committee.

Certified
copy of
record

(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of the fee therefor, the Registrar shall furnish the party with a certified copy of the record of the proceedings, including the documents received in evidence and the decision or order appealed from.

Powers of
court on
appeal

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the committee appealed from and may exercise all powers of the committee and may direct the committee to take any action which the committee may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the committee or the court may refer the matter back to the committee for rehearing in whole or in part, in accordance with such directions as the court considers proper.

Fees
Mediation
Committee

29.—(1) No person who is a member of the Complaints Committee or the Discipline Committee shall be a member of the Fees Mediation Committee.

Duties
of Fees
Mediation
Committee

(2) The Fees Mediation Committee,

(a) shall, unless the committee considers it inappropriate to do so, mediate any written complaint by a client of a member of the Association or of a holder of a certificate of authorization in respect of a fee charged for services in the practice of professional land surveying provided to the client; and

(b) shall perform such other duties as are assigned to it by the Council.

Arbitration
by Fees
Mediation
Committee

(3) The Fees Mediation Committee, with the written consent of all parties to the dispute, may arbitrate a dispute in respect of a fee between a client and a member of the Association or a holder of a certificate of authorization and in that case the decision of the Fees Mediation Committee is final and binding on all parties to the dispute.

(4) Where the Fees Mediation Committee acts as arbitrator under subsection (3), the *Arbitrations Act* does not apply.

Application
of
R.S.O. 1980,
c. 25

(5) A decision by the Fees Mediation Committee under subsection (3), exclusive of the reasons therefor, certified by the Registrar, may be filed with the Supreme Court or a county or district court and when filed the decision may be enforced in the same manner as a judgment of the court.

Enforcement

30.—(1) Where the Registrar believes on reasonable and probable grounds that a member of the Association has committed an act of professional misconduct or incompetence or that there is cause to refuse to issue or to suspend or revoke a certificate of authorization, the Registrar by order may appoint one or more persons to make an investigation to ascertain whether such act has occurred or there is such cause, and the person or persons appointed shall report the result of the investigation to the Registrar.

Registrar's
investigation

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member or holder of the certificate of authorization in respect of whom the investigation is being made and may, upon production of his or her appointment, enter at any reasonable time the business premises of the member or holder and examine books, records, documents and things relevant to the subject-matter of the investigation and, for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

Powers of
investigator

R.S.O. 1980,
c. 411

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or her or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Obstruction
of
investigator

(4) Where a provincial judge is satisfied on evidence upon oath,

Order by
provincial
judge

- (a) that the Registrar had grounds for appointing and by order has appointed one or more persons to make an investigation; and
- (b) that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the member of the Association or holder of a certificate of authorization whose affairs are being inves-

tigated and to the subject-matter of the investigation,

the provincial judge may issue an order authorizing the person or persons making the investigation, together with such police officer or officers as they call upon to assist them, to enter and search, by force, if necessary, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them.

Execution
of order

(5) An order issued under subsection (4) shall be executed at reasonable times as specified in the order.

Expiry
of order

(6) An order issued under subsection (4) shall state the date on which it expires, which shall be a date not later than fifteen days after the order is issued.

Ex parte
application

(7) A provincial judge may receive and consider an application for an order under subsection (4) without notice to and in the absence of the member of the Association or holder of a certificate of authorization whose affairs are being investigated.

Removal of
books, etc.

(8) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under this section relating to the member or holder whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member or holder whose practice is being investigated.

Admissibility
of copies

(9) Any copy made as provided in subsection (8) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as proof in the absence of evidence to the contrary of the original book, record or document and its contents.

Report of
Registrar

(10) The Registrar shall report the results of the investigation to the Council or such committee as the Registrar considers appropriate.

Information
re insurance
claims,
definition

31.—(1) In this section, “insurer” means a person offering insurance in respect of liability incurred in the practice of professional land surveying.

Information

(2) Upon the request of the Registrar, an insurer shall furnish to the Registrar any information that is in the possession

of the insurer and that is specified in the request related to a claim or claims for indemnity in respect of the practice of professional land surveying.

(3) Subsection (2) does not apply in respect of a document prepared by an insured person relating to a claim for indemnity in respect of the practice of professional land surveying by the insured person. Exception

(4) The Registrar may forward any information referred to in subsection (2) to such committee as he considers appropriate. Transmittal of information

32.—(1) No member of the Association or holder of a certificate of authorization shall engage in the practice of professional land surveying unless insured against professional liability in accordance with the regulations or in accordance with arrangements under subsection (2). Professional liability insurance

(2) The Association may make arrangements respecting insurance against professional liability for members of the Association and holders of certificates of authorization. Arrangements by Association

(3) Arrangements under subsection (2) may include arrangements respecting the payment and remission of premiums. Premiums

(4) The Association may prescribe levies that shall be paid by members of the Association and holders of certificates of authorization related to arrangements under subsection (2). Levies

33.—(1) The Association shall continue to maintain the fund known as the "Compensation Fund" and shall continue to hold it in trust for the purposes of this section. Compensation Fund

(2) The Compensation Fund shall be made up of, Composition of Fund

- (a) all moneys paid by members of the Association under subsection (3);
- (b) all moneys earned from the investment of moneys in the Fund;
- (c) all moneys recovered under subsection (7); and
- (d) all moneys contributed by any person.

(3) Every member, other than those of a class exempted by the by-laws, shall pay to the Association for the Compensation Fund levy Compensation Fund levy

tion Fund such sum as is prescribed from time to time by the by-laws.

Insurance

(4) The Council may insure with any insurer licensed to carry on business in Ontario for such purposes and on such terms as the Council considers expedient in relation to the Compensation Fund, and, in such event, the moneys in the Fund may be used for the payment of premiums.

Grants

(5) The Council in its absolute discretion may make grants from the Compensation Fund in order to relieve or mitigate loss sustained by any person in consequence of dishonesty or incompetence in the practice of professional land surveying on the part of any member notwithstanding that after the commission of the act of dishonesty or incompetence the member may have died or ceased to administer his or her affairs or to be a member.

Conditions
of grants

(6) No grant shall be made out of the Compensation Fund unless notice in writing of the loss is received by the Registrar within six months after the loss came to the knowledge of the person suffering the loss or within such further time, not exceeding eighteen months, as in any case may be allowed by the Council.

Subrogation

(7) If a grant is made under this section, the Association is subrogated to the amount of the grant to any rights or remedies to which the person receiving the grant was entitled on account of the loss in respect of which the grant was made against the member or any other person, or, in the event of the death or insolvency or other disability of the member or other person, against his or her personal representative or other person administering his or her estate.

Grantees'
rights con-
ditionally
limited

(8) A person to whom a grant is made under this section, or, in the event of the person's death or insolvency or other disability, the personal representative or other person administering his or her estate, has no right to receive anything from the member or the member's estate in respect of the loss in respect of which the grant was made until the Association has been reimbursed the full amount of the grant.

Reimburse-
ment from
bankrupt's
estate

(9) Where a grant has been made under this section and the member has been declared a bankrupt, the Association is entitled to prove against the bankrupt's estate for the full amount of the claim of the person to whom the grant was made and to receive all dividends on such amount until the Association has been reimbursed the full amount of the grant.

(10) The Council may delegate any of the powers conferred upon it by this section to a committee of the Council and, whether or not the Council has made any such delegation, it may appoint any member as a referee and delegate to the member any of the powers conferred upon it by this section that are not delegated to a committee.

Delegation
of powers to
committee
or referee
or both

(11) Where the Council has delegated any of its powers under this section to a committee or to a referee, the committee or referee, as the case may be, shall report as required to the Council.

Reports

(12) There may be paid out of the Compensation Fund the costs of its administration, including the costs of investigations and hearings and all other costs, salaries and expenses necessarily incidental to the administration of the Fund.

Costs of
adminis-
tration

(13) Surplus moneys in the Compensation Fund may be applied for such other purposes as are specified by the Council and approved by the Lieutenant Governor in Council.

Other
purposes

34. Where a licence, certificate of authorization or certificate of registration is revoked or cancelled, the former holder thereof shall forthwith deliver the licence or certificate and related seal to the Registrar.

Surrender of
cancelled
licence,
etc.

35.—(1) A person whose licence, certificate of authorization or certificate of registration has been revoked for cause under this Act, or whose membership has been cancelled for cause under a predecessor of this Act, may apply in writing to the Registrar for the issuance of a licence, certificate of authorization or certificate of registration, but such application shall not be made sooner than two years after the revocation or cancellation.

Restoration
of licence,
etc.

(2) The Registrar shall refer the application to the Discipline Committee which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and to the applicant.

Reference to
Discipline
Committee

(3) The provisions of this Act applying to hearings by the Registration Committee, except section 28, apply with necessary modifications to proceedings of the Discipline Committee under this section.

Procedures

(4) Notwithstanding subsections (1), (2) and (3), the Council may direct at any time that a licence, certificate of authorization or certificate of registration be issued to a person whose licence, certificate of authorization or certificate of registration has previously been revoked for cause or sus-

Direction
by Council
to issue
licence

pended for cause or that a suspension or cancellation for cause under a predecessor of this Act be removed, subject to such terms, conditions and limitations as the Council considers appropriate.

Confidentiality

36.—(1) Every person engaged in the administration of this Act, including any person making a review or investigation under section 24 or 30, shall preserve secrecy with respect to all matters that come to the person's knowledge in the course of the person's duties, employment, inquiry or investigation and shall not communicate any such matter to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceedings under this Act or the regulations;
- (b) that the person may communicate any such matter to his or her counsel; or
- (c) with the consent of the person to whom the information relates.

Testimony in civil action

(2) No person to whom subsection (1) applies shall be required to give testimony or to produce any book, record, document or thing in any action or proceeding with regard to information obtained in the course of his or her duties, employment, inquiry or investigation except in a proceeding under this Act or the regulations.

Use of "O.L.S." by corporation

37.—(1) A corporation whose name includes the title "Ontario land surveyor" or the initials "O.L.S." and that ceases to hold a subsisting certificate of authorization shall not carry on or engage in any business until the title "Ontario land surveyor" or the initials "O.L.S." are removed from the name of the corporation.

Exception

(2) Subsection (1) does not apply to prevent a corporation from carrying on an activity necessary to the winding up of the corporation.

Proceedings to prohibit continuation or repetition of contravention

38. Where any provision of this Act or the regulations is contravened, notwithstanding any other remedy or any penalty imposed, the Association may apply to a judge of the Supreme Court for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified in the order that, in the opinion of the court, will result or will likely result in the continuation or repetition of the contravention by the person committing the contraven-

tion, and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Supreme Court.

39.—(1) Every person who contravenes section 11 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$15,000 and for each subsequent offence to a fine of not more than \$30,000. Penalties

(2) Every person who is not a member of the Association and who uses the title “Ontario land surveyor” or the initials “O.L.S.” as an occupational designation is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$5,000 and for each subsequent offence to a fine of not more than \$15,000. Idem

(3) Every person who obstructs a person appointed to make an investigation under section 30 in the course of his or her duties is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. Idem

(4) Every corporation that contravenes section 37 is guilty of an offence and on conviction is liable for a first offence to a fine of not more than \$5,000 and for each subsequent offence to a fine of not more than \$15,000. Idem

(5) Where a corporation is guilty of an offence under subsection (1), (2), (3) or (4), every director or officer of the corporation who authorizes, permits or acquiesces in the offence is guilty of an offence and on conviction is liable to a fine of not more than \$30,000. Idem, director or officer of corporation

(6) Proceedings shall not be commenced in respect of an offence under subsection (1), (2), (3), (4) or (5) after two years after the date on which the offence was, or is alleged to have been, committed. Limitation

40.—(1) Any person who makes or causes to be made any wilful falsification in any matter relating to a register or issues a false licence, certificate of authorization or certificate of registration or a false document with respect to a register maintained by the Registrar under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. Falsification of certificate

(2) Any person who wilfully procures or attempts to procure himself or herself to be licensed or to be issued a certificate of authorization or a certificate of registration under this Act by knowingly making any false representation or declaration or by making a fraudulent representation or declaration, Offences for false representation

either orally or in writing, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

Aiding and assisting

(3) Every person knowingly aiding and assisting in the commission of an offence under subsection (2) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

Limitation period

(4) Proceedings to obtain a conviction for an offence under subsection (1) shall not be commenced after the expiration of six months after the date on which the offence was, or is alleged to have been, committed.

Onus of proof

41. Where licensing or the holding of a certificate of authorization under this Act is required to permit the lawful doing of any act or thing, if in any prosecution it is proven that the defendant has done such act or thing, the burden of proving that the defendant was so licensed or that the defendant held a subsisting certificate of authorization under this Act rests upon the defendant.

Service of notice

42. A notice or document required by this Act to be served or delivered may be served or delivered personally or by prepaid first class mail addressed to the person to whom notice is to be given at the person's last known address and, where notice is served or delivered by mail, the service or delivery shall be deemed to have been made on the tenth day after the day of mailing unless the person to whom notice is given establishes that the person, acting in good faith, through absence, accident, illness or other cause beyond the person's control, did not receive the notice, or did not receive the notice until a later date.

Registrar's certificate as evidence

43. Any statement containing information from the records required to be kept by the Registrar under this Act, purporting to be certified by the Registrar under the seal of the Association, is admissible in evidence in all courts as proof in the absence of evidence to the contrary of the facts stated therein without proof of the appointment or signature of the Registrar and without proof of the seal.

Immunity

44.—(1) No action or other proceeding for damages shall be instituted against the Association, a committee of the Association or a member of the Association or committee, or an officer, employee, agent or appointee of the Association for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

(2) Every member of the Council and every officer, member or employee of the Association, and his or her heirs, executors and administrators, and estate and effects, respectively, may, with the consent of the Association, given at any meeting of the members of the Association, from time to time and at all times, be indemnified and saved harmless out of the funds of the Association, from and against,

Councillor indemnified in suits respecting execution of office

- (a) all costs, charges and expenses whatsoever that he or she sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him or her, in or about the execution of the duties of his or her office, employment or appointment; and
- (b) all other costs, charges and expenses that he or she sustains or incurs in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by his or her own wilful neglect or default.

45.—(1) The Council shall make a report annually to the Minister containing such information as the Minister requires.

Annual report

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Idem

46.—(1) The *Corporations Act* does not apply in respect of the Association except for the following sections of that Act which shall apply with necessary modifications in respect of the Association:

Application of R.S.O. 1980, c. 95

- 1. Section 81 (liability for wages).
- 2. Section 94 (auditors) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.
- 3. Subsection 95 (1) (auditor's qualifications) and, for the purpose, the subsection shall be deemed not to include,
 - i. the exception as provided in subsection 95 (2), and
 - ii. the reference to an affiliated company.

4. Section 96 (auditor's functions).
5. Subsection 97 (1), exclusive of clause 97 (1) (b), (auditor's report) and, for the purpose, the Association shall be deemed to be a private company.
6. Subsection 97 (3) (auditor's report).
7. Section 122 (liability of members).
8. Section 276 (holding of land) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.
9. Section 280 (making contracts).
10. Section 281 (power of attorney).
11. Section 282 (authentication of documents) except in respect of information from the records required to be kept by the Registrar.
12. Section 292 (validity of acts of directors).
13. Section 297 (directions by a court as to holding a meeting).
14. Section 299 (minutes of meetings).
15. Section 302 (books of account).
16. Section 303 (untrue entries) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.
17. Section 304 (place of keeping and the inspection of records) and, for the purpose,
 - i. the section shall be deemed not to refer to sections 41 and 43 of that Act, and
 - ii. the Minister shall be deemed to be the Minister referred to in the section.
18. Section 305 (inspection of records) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.
19. Section 310 (investigations and audits).

20. Section 323 (evidence of by-laws and certificates of amounts due).
21. Section 329 (removal of proceedings into the Supreme Court).
22. Section 330 (appeals).
23. Section 331 (untrue statements) and, for the purpose,
 - i. the section shall be deemed not to refer to regulations made under that Act, and
 - ii. the Minister and the Deputy Minister to the Minister shall be deemed to be the Minister and the Deputy Minister referred to in the section.
24. Section 333 (orders by the court) and, for the purpose, the section shall be deemed not to refer to creditors.

(2) For the purposes of subsection (1), a member of the Association shall be deemed to be a shareholder. Interpretation

47.—(1) The *Surveyors Act*, being chapter 492 of the Revised Statutes of Ontario, 1980, is repealed. Repeal

(2) Section 8 of the *Mobility Rights Statute Law Amendment Act, 1985*, being chapter 5, is repealed. Idem

(3) A reference in any Act or regulation to a surveyor or an Ontario land surveyor registered under the *Surveyors Act* shall be deemed to be a reference to a member of the Association licensed to engage in the practice of cadastral surveying. References
R.S.O. 1980,
c. 492

(4) A reference in any Act or regulation to the *Surveyors Act* shall be deemed to be a reference to this Act. Idem

48. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

49. The short title of this Act is the *Surveyors Act, 1987*. Short title

CA20N
XB
-B 56

Bill 128

An Act to amend the Employment Standards Act

The Hon. W. Wrye
Minister of Labour

1st Reading July 10th, 1986

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTES

Under the Bill, every contract of employment will be deemed to provide for the payment of severance pay and termination pay owing to an employee in two equal weekly instalments immediately following termination of employment. Severance pay and termination pay will be allocated to the weeks in which they are paid. (Proposed subsection 7 (5) of the Act, as set out in section 2 of the Bill).

Other payments payable on termination of employment, such as vacation pay, are not affected by the Bill and, as is now the case, must be paid within seven days of the termination. (Proposed subsection 7 (4) of the Act, as set out in section 2 of the Bill).

The definition of "severance pay" set out in section 1 of the Bill is complementary to the enactment of the provisions described above.

Bill 128

1986

An Act to amend the Employment Standards Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

(na) "severance pay" means the amount of pay to which an employee is entitled under section 40a.

2. Subsection 7 (4) of the said Act is repealed and the following substituted therefor:

(4) Any payment to which an employee is entitled upon termination of employment, other than termination pay and severance pay, shall be paid by the employer to the employee not later than seven days after termination of employment.

Payment on
termination

(5) Every contract of employment shall be deemed to include the following provision:

Deemed term
of
employment
contract

All severance pay and termination pay become payable and shall be paid by the employer to the employee in two weekly instalments beginning with the first full week following termination of employment and shall be allocated to such weeks accordingly. This provision does not apply to severance pay if the employee has elected to maintain a right of recall as provided in subsection 40a (7) of the *Employment Standards Act*.

(6) For the purposes of subsections (4) and (5), if an employer provides payments on termination in excess of those required by section 40 or section 40a, the entire amount so provided shall be deemed to be severance pay or termination pay, as the case may be.

Extended
application

Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Employment Standards Amendment Act, 1986*.

Bill 128

(Chapter 51
Statutes of Ontario, 1986)

An Act to amend the Employment Standards Act

The Hon. W. Wrye
Minister of Labour



<i>1st Reading</i>	July 10th, 1986
<i>2nd Reading</i>	November 5th, 1986
<i>3rd Reading</i>	November 18th, 1986
<i>Royal Assent</i>	November 18th, 1986

Bill 128

1986

An Act to amend the Employment Standards Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

(na) “severance pay” means the amount of pay to which an employee is entitled under section 40a.

2. Subsection 7 (4) of the said Act is repealed and the following substituted therefor:

(4) Any payment to which an employee is entitled upon termination of employment, other than termination pay and severance pay, shall be paid by the employer to the employee not later than seven days after termination of employment.

Payment on
termination

(5) Every contract of employment shall be deemed to include the following provision:

Deemed term
of
employment
contract

All severance pay and termination pay become payable and shall be paid by the employer to the employee in two weekly instalments beginning with the first full week following termination of employment and shall be allocated to such weeks accordingly. This provision does not apply to severance pay if the employee has elected to maintain a right of recall as provided in subsection 40a (7) of the *Employment Standards Act*.

(6) For the purposes of subsections (4) and (5), if an employer provides payments on termination in excess of those required by section 40 or section 40a, the entire amount so provided shall be deemed to be severance pay or termination pay, as the case may be.

Extended
application

Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Employment Standards Amendment Act, 1986*.

CA20N
KB
B 56

Bill 129

An Act to amalgamate Toronto General Hospital and Toronto Western Hospital

The Hon. M. Elston
Minister of Health



1st Reading July 10th, 1986
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to amalgamate Toronto General Hospital and Toronto Western Hospital under the name of The Toronto Hospital.

Bill 129

1986

An Act to amalgamate Toronto General Hospital and Toronto Western Hospital

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“Board” means the board of trustees of The Toronto Hospital;

“Corporation” means The Toronto Hospital.

2.—(1) Toronto General Hospital and Toronto Western Hospital are amalgamated and continued as a corporation without share capital under the name of The Toronto Hospital.

Amalgamation and continuation as corporation

(2) The Corporation shall be composed of its members who are those persons who from time to time comprise its Board.

Composition

3. The letters patent of Toronto Western Hospital are revoked on the day this Act comes into force but their revocation does not affect the property, rights, duties, licences, privileges, contracts or obligations of Toronto Western Hospital as they existed on the day this Act comes into force.

Letters patent revoked

4.—(1) All gifts, trusts, bequests, devises and grants of real or personal property or of the income or proceeds thereof, heretofore or hereafter expressed by any person in a deed or will, to be made, given or conveyed to Toronto General Hospital or Toronto Western Hospital or any of their units or to any person in trust for or for the benefit of the foregoing, shall, in so far as the same shall not have vested in possession or been carried into effect on the day this Act comes into force, in the absence of an expressed intention to the contrary set out in such deed or will, be construed as though the same had been expressed to be made to the Corporation and shall be paid over, granted or conveyed, by the executor, trustee or

Gifts, etc.

other person or corporation charged with the duty of carrying into effect or administering such deed or will to the Corporation whose receipt shall be a sufficient discharge thereof.

Idem,
to hospital
foundation

(2) All gifts, trusts, bequests, devises and grants of real or personal property or of the income or proceeds thereof, heretofore or hereafter expressed by any person in a deed or will, to be made, given or conveyed to The Toronto General Hospital Foundation or Toronto Western Hospital Foundation or to any person in trust for or for the benefit of the foregoing, shall, in so far as the same shall not have vested in possession or been carried into effect on the day the foundations amalgamate, in the absence of an expressed intention to the contrary set out in such deed or will, from and after such amalgamation, be construed as though the same had been expressed to be made to the amalgamated foundation and shall be paid over, granted or conveyed, by the executor, trustee or other person or corporation charged with the duty of carrying into effect or administering such deed or will to the amalgamated foundation whose receipt shall be a sufficient discharge thereof.

Transfer
of property,
liabilities,
etc.

(3) The Corporation shall,

- (a) possess all the property, rights, privileges and franchises and shall be subject to all liabilities, contracts, disabilities and debts of Toronto General Hospital and Toronto Western Hospital existing on the day this Act comes into force; and
- (b) be deemed to be the party plaintiff or the party defendant, as the case may be, in any civil action commenced by or against Toronto General Hospital or Toronto Western Hospital before the coming into force of this Act.

Idem

(4) A conviction against or ruling, order or judgment in favour or against Toronto General Hospital or Toronto Western Hospital may be enforced by or against the Corporation.

Objects

5.—(1) The objects of the Corporation are,

- (a) to establish, equip, maintain, operate and conduct hospital, teaching and research facilities and provide programs of patient care and community health;
- (b) to conduct programs of education and research in the field of health in association with the University of Toronto or with other persons; and

- (c) to accept donations, gifts, legacies and bequests for use in promoting the objects of and carrying on the work of the Corporation.

(2) The Corporation shall, prior to conducting programs under clause (1) (b) with persons other than the University of Toronto, consult with the University of Toronto in the manner set out in the by-laws of the Corporation. Prior consultation

6.—(1) The affairs of the Corporation shall be managed and controlled by a board of trustees constituted as follows: Board of trustees

1. Three trustees appointed by the Lieutenant Governor in Council for a term of three years.
2. Four trustees appointed by The Governing Council of the University of Toronto for a term of three years.
3. Three trustees appointed by the council of The Corporation of the City of Toronto to hold office until the expiration of the term of the council that made the appointments.
4. One representative of The Toronto Hospital Auxiliary appointed in the manner and for the term set out in the by-laws of the Corporation.
5. The president of the Corporation, the president of the medical staff, the chairman and the vice-chairman of the medical advisory committee.
6. Eleven trustees elected by the financial contributors to the Corporation as determined by by-law for a term of three years.
7. Such other persons as are provided for under the *Public Hospitals Act*.

R.S.O. 1980,
c. 410

(2) Trustees shall serve until their successors are appointed or elected and may be reappointed or re-elected subject to any restrictions set out in the by-laws. Reappointment or re-election

(3) The trustees elected under paragraph 6 of subsection (1) shall be retired in rotation in accordance with the by-laws of the Corporation but at least two of such trustees shall retire each year. Staggered terms

(4) The number of trustees elected under paragraph 6 of subsection (1) may be changed by by-law of the Corporation. Number of trustees may be altered

By-law to be approved

(5) No by-law of the Corporation under subsection (4) is effective unless it is passed,

- (a) by a majority of votes cast by the elected trustees; and
- (b) by a majority of votes cast by the appointed trustees,

at a meeting called for that purpose.

Confirmation of by-law

(6) A by-law passed under subsection (4), and a repeal, amendment or re-enactment thereof, unless confirmed by at least two-thirds of the votes cast at a meeting of the financial contributors to the Corporation called for that purpose, is effective only until the next annual meeting unless so confirmed by the financial contributors at such annual meeting and in that case no new by-law of the same or like substance has any effect until so confirmed at a general meeting of the financial contributors.

Persons ineligible to be trustees

(7) No member of the medical staff or employee of the Corporation and no child, parent, brother, sister or spouse of a trustee is eligible for election or appointment to the Board other than as an honorary or *ex officio* trustee.

Persons eligible to be trustees
R.S.O. 1980,
c. 410

(8) Notwithstanding subsection (7), or the *Public Hospitals Act*, the president, a dean of a health science faculty and the health sciences vice provost of the University of Toronto are eligible to be members of the Board.

Vacancies

(9) Vacancies on the Board shall be filled,

- (a) in the case of appointed trustees, by the body making the original appointment; and
- (b) in the case of elected trustees, by the remaining elected trustees, from persons nominated by the chairman of the Board,

and such person shall hold office for the unexpired term of the vacating member.

Quorum

(10) Two-fifths of the members of the Board constitute a quorum for the transaction of business.

Remuneration

(11) The services of the members of the Board shall be given without remuneration, except for actual disbursements incurred in connection with the affairs of the Corporation and approved by the Board, but this subsection does not prevent

an *ex officio* member of the Board from receiving a salary or other remuneration for his or her employment by or services rendered to the Corporation otherwise than as a trustee.

7.—(1) The members of the boards of trustees of Toronto General Hospital and Toronto Western Hospital in office immediately prior to the coming into force of this Act are the first trustees of the Corporation and shall remain in office until their successors are appointed or elected in accordance with this Act and the by-laws. Transition

(2) Notwithstanding subsection (1), the Board may by by-law reduce the number of trustees until the Board is constituted as set out in subsection 6 (1). Number of trustees may be reduced

8. Subject to the *Public Hospitals Act*, the Corporation may, Powers of Corporation
R.S.O. 1980,
c. 410

- (a) furnish, equip, alter, expand or enlarge its hospitals and establish or acquire other hospitals or similar institutions;
- (b) acquire real property that is necessary or desirable for the alteration, expansion or enlargement of its hospital, or otherwise for the purposes of the Corporation, by gift, deed or lease or, subject to the *Expropriations Act*, by expropriation; R.S.O. 1980,
c. 148
- (c) acquire personal property that is necessary or desirable for the purposes of the Corporation by gift, purchase or lease;
- (d) sell or dispose of any real or personal property no longer required for its purposes, but the proceeds derived from any such sale or disposal shall be held and applied for the purposes of the Corporation;
- (e) borrow money on the credit of the Corporation and provide security therefor on such terms and in such amounts as it may deem advisable; and
- (f) subject to any express term of a specific trust, invest and reinvest its funds in such securities as are authorized by by-law without being limited to those investments authorized for trustees under the *Trustee Act*. R.S.O. 1980,
c. 512

9. Notwithstanding the *Public Hospitals Act*, Meetings
R.S.O. 1980,
c. 410

- (a) the annual meeting of the Corporation shall be held between the 1st day of April and the 1st day of October in each year on a day fixed by the Board; and
- (b) notice of the annual or any other meeting of the Corporation shall be given in the manner set out in the by-laws of the Corporation.

Proxies

10. Notwithstanding section 13 of the *Public Hospitals Act*, the Board may by by-law permit proxy voting by the financial contributors of the Corporation in the manner set out in the by-law.

Executive committee

11.—(1) The Board may by by-law elect from among themselves an executive committee and may delegate to the executive committee any powers of the Board subject to any limitations set out in the by-law.

Other committees

(2) The Board may by by-law appoint a committee or committees and delegate to that committee or committees any of the powers of the Board as set out in the by-law.

Auditor

R.S.O. 1980,
c. 405

12. The Board shall appoint a public accountant, licensed under the *Public Accountancy Act*, as auditor of the Corporation.

By-laws

R.S.O. 1980,
c. 410

13. Subject to the *Public Hospitals Act*, the Board may enact by-laws for the operation and management of the affairs of the Corporation and of its hospital or any similar institution established by the Corporation.

Chairman

14.—(1) The Board shall elect a chairman from among its members who shall hold office for such period as may be set out in the by-law.

President,
other
officers

(2) The Board shall appoint a president and may appoint other officers.

Board
members
eligible

(3) Members of the Board may be appointed under subsection (2).

Financial
contributors

15.—(1) The Board may by by-law establish voting rights and categories of persons eligible to vote at any meeting called for the purpose of electing trustees, based on financial contributions or other criteria.

Membership
continued

(2) Those persons who are subscribers of Toronto General Hospital or members of Toronto Western Hospital on the day this Act comes into force continue as financial contributors to

the Corporation with the same rights and privileges unless and until varied by by-law of the Corporation.

16.—(1) Subject to the *Public Hospitals Act*, the Board may appoint medical staff including persons engaged in research activities on such terms and conditions as the Board considers advisable.

Medical staff
R.S.O. 1980,
c. 410

(2) Unless otherwise ordered by the Board, the persons who are members of the medical staff of Toronto Western Hospital and Toronto General Hospital continue as members of the medical staff of the Corporation.

Transition,
medical
staff

17. The following Acts are repealed:

Repeal

1. *The Toronto General Hospital Act*, being chapter 396 of the Revised Statutes of Ontario, 1937.
2. *The Toronto Western Hospital Act, 1942*, being chapter 59.
3. *The Toronto General Hospital Amendment Act, 1946*, being chapter 99.

18. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

19. The short title of this Act is the *Toronto Hospital Act*, 1986.

Short title

Bill 129

An Act to amalgamate Toronto General Hospital and Toronto Western Hospital

The Hon. M. Elston
Minister of Health



1st Reading July 10th, 1986
2nd Reading October 21st, 1986
3rd Reading
Royal Assent

(Reprinted as amended by the Social Development Committee)

EXPLANATORY NOTE

The purpose of the Bill is to amalgamate Toronto General Hospital and Toronto Western Hospital under the name of The Toronto Hospital.

Bill 129

1986

An Act to amalgamate Toronto General Hospital and Toronto Western Hospital

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“Board” means the board of trustees of The Toronto Hospital;

“Corporation” means The Toronto Hospital;

“Toronto General Hospital” means the corporation named “The Trustees of the Toronto General Hospital” and also known as Toronto General Hospital.

2.—(1) Toronto General Hospital and Toronto Western Hospital are amalgamated and continued as a corporation without share capital under the name of The Toronto Hospital.

Amalgamation and continuation as corporation

(2) The Corporation shall be composed of its members who are those persons who from time to time comprise its Board.

Composition

3. The letters patent of Toronto Western Hospital are revoked on the day this Act comes into force but their revocation does not affect the property, rights, duties, licences, privileges, contracts or obligations of Toronto Western Hospital as they existed on the day this Act comes into force.

Letters patent revoked

4.—(1) All gifts, trusts, bequests, devises and grants of real or personal property or of the income or proceeds thereof, heretofore or hereafter expressed by any person in a deed, will or other document, to be made, given or conveyed to Toronto General Hospital or Toronto Western Hospital or any of their units or to any person in trust for or for the benefit of the foregoing, shall, in so far as the same shall not have vested in possession or been carried into effect on the day this

Gifts, etc.

Act comes into force, in the absence of an expressed intention to the contrary set out in such deed, will or other document, be construed as though the same had been expressed to be made to the Corporation and shall be paid over, granted or conveyed, by the executor, trustee or other person or corporation charged with the duty of carrying into effect or administering such deed, will or other document to the Corporation whose receipt shall be a sufficient discharge thereof.

Idem,
to hospital
foundation

(2) All gifts, trusts, bequests, devises and grants of real or personal property or of the income or proceeds thereof, heretofore or hereafter expressed by any person in a deed, will or other document, to be made, given or conveyed to The Toronto General Hospital Foundation or Toronto Western Hospital Foundation or to any person in trust for or for the benefit of the foregoing, shall, in so far as the same shall not have vested in possession or been carried into effect on the day the foundations amalgamate, in the absence of an expressed intention to the contrary set out in such deed, will or other document, from and after such amalgamation, be construed as though the same had been expressed to be made to the amalgamated foundation and shall be paid over, granted or conveyed, by the executor, trustee or other person or corporation charged with the duty of carrying into effect or administering such deed, will or other document to the amalgamated foundation whose receipt shall be a sufficient discharge thereof.

Transfer
of property,
liabilities,
etc.

(3) The Corporation shall,

- (a) possess all the property, rights, privileges and franchises and shall be subject to all liabilities, contracts, disabilities and debts of Toronto General Hospital and Toronto Western Hospital existing on the day this Act comes into force; and
- (b) be deemed to be the party plaintiff or the party defendant, as the case may be, in any civil action commenced by or against Toronto General Hospital or Toronto Western Hospital before the coming into force of this Act.

Idem

(4) A conviction against or ruling, order or judgment in favour or against Toronto General Hospital or Toronto Western Hospital may be enforced by or against the Corporation.

Objects

5.—(1) The objects of the Corporation are,

- (a) to establish, equip, maintain, operate and conduct hospital, teaching and research facilities and provide programs of patient care and community health;
- (b) to conduct programs of education and research in the field of health in association with the University of Toronto or with other persons; and
- (c) to accept donations, gifts, legacies and bequests for use in promoting the objects of and carrying on the work of the Corporation.

(2) The Corporation shall, prior to conducting programs under clause (1) (b) with persons other than the University of Toronto, consult with the University of Toronto in the manner set out in the by-laws of the Corporation. Prior consultation

6.—(1) The affairs of the Corporation shall be managed and controlled by a board of trustees constituted as follows: Board of trustees

1. Three trustees appointed by the Lieutenant Governor in Council for a term of three years.
2. Four trustees appointed by The Governing Council of the University of Toronto for a term of three years.
3. Three trustees appointed by the council of The Corporation of the City of Toronto to hold office until the expiration of the term of the council that made the appointments.
4. At least one but not more than two representatives of The Toronto Hospital Auxiliary appointed in the manner and for the term set out in the by-laws of the Corporation.
5. The president of the Corporation, the president of the medical staff, the chairman and the vice-chairman of the medical advisory board.
6. Eleven trustees elected by the financial contributors to the Corporation as determined by by-law for a term of three years.
7. Such other persons as are provided for under the *Public Hospitals Act*.

Reappoint-
ment or
re-election

(2) Trustees shall serve until their successors are appointed or elected and may be reappointed or re-elected subject to any restrictions set out in the by-laws.

Staggered
terms

(3) The trustees elected under paragraph 6 of subsection (1) shall be retired in rotation in accordance with the by-laws of the Corporation but at least two of such trustees shall retire each year.

Number of
trustees may
be altered

(4) The number of trustees elected under paragraph 6 of subsection (1) may be changed by by-law of the Corporation.

By-law to be
approved

(5) No by-law of the Corporation under subsection (4) is effective unless it is passed,

(a) by a majority of votes cast by the elected trustees;
and

(b) by a majority of votes cast by the appointed trustees,

at a meeting called for that purpose.

Confirmation
of by-law

(6) A by-law passed under subsection (4), and a repeal, amendment or re-enactment thereof, unless confirmed by at least two-thirds of the votes cast at a meeting of the financial contributors to the Corporation called for that purpose, is effective only until the next annual meeting unless so confirmed by the financial contributors at such annual meeting and in that case no new by-law of the same or like substance has any effect until so confirmed at a general meeting of the financial contributors.

Persons
ineligible to
be trustees

(7) No member of the medical staff or employee of the Corporation and no child, parent, brother, sister or spouse of a trustee is eligible for election or appointment to the Board other than as an honorary or *ex officio* trustee.

Persons
eligible
to be
trustees
R.S.O. 1980,
c. 410

(8) Notwithstanding subsection (7), or the *Public Hospitals Act*, the president, a dean of a health science faculty and the health sciences vice provost of the University of Toronto are eligible to be members of the Board.

Vacancies

(9) Vacancies on the Board shall be filled,

(a) in the case of appointed trustees, by the body making the original appointment; and

- (b) in the case of elected trustees, by the remaining elected trustees, from persons nominated by the chairman of the Board,

and such person shall hold office for the unexpired term of the vacating member.

(10). Two-fifths of the members of the Board constitute a quorum for the transaction of business. Quorum

(11) The services of the members of the Board shall be given without remuneration, except for actual disbursements incurred in connection with the affairs of the Corporation and approved by the Board, but this subsection does not prevent an *ex officio* member of the Board from receiving a salary or other remuneration for his or her employment by or services rendered to the Corporation otherwise than as a trustee. Remuneration

7.—(1) The members of the boards of trustees of Toronto General Hospital and Toronto Western Hospital in office immediately prior to the coming into force of this Act are the first trustees of the Corporation and shall remain in office until their successors are appointed or elected in accordance with this Act and the by-laws. Transition

(2) Notwithstanding subsection (1), the Board may by by-law reduce the number of trustees until the Board is constituted as set out in subsection 6 (1). Number of trustees may be reduced

8. Subject to the *Public Hospitals Act*, the Corporation may, Powers of Corporation
R.S.O. 1980,
c. 410

- (a) furnish, equip, alter, expand or enlarge its hospitals and establish or acquire other hospitals or similar institutions;
- (b) acquire real property that is necessary or desirable for the alteration, expansion or enlargement of its hospital, or otherwise for the purposes of the Corporation, by gift, deed or lease or, subject to the *Expropriations Act*, by expropriation; R.S.O. 1980,
c. 148
- (c) acquire personal property that is necessary or desirable for the purposes of the Corporation by gift, purchase or lease;
- (d) sell or dispose of any real or personal property no longer required for its purposes, but the proceeds derived from any such sale or disposal shall be held and applied for the purposes of the Corporation;

- (e) borrow money on the credit of the Corporation and provide security therefor on such terms and in such amounts as it may deem advisable; and
- (f) subject to any express term of a specific trust, invest and reinvest its funds in such securities as are authorized by by-law without being limited to those investments authorized for trustees under the *Trustee Act*.

R.S.O. 1980,
c. 512

Meetings
R.S.O. 1980,
c. 410

9. Notwithstanding the *Public Hospitals Act*,

- (a) the annual meeting of the Corporation shall be held between the 1st day of April and the 1st day of October in each year on a day fixed by the Board; and
- (b) notice of the annual or any other meeting of the Corporation shall be given in the manner set out in the by-laws of the Corporation.

Proxies

10. The Board may by by-law permit proxy voting by the financial contributors of the Corporation in the manner set out in the by-law.

Executive
committee

11.—(1) The Board may by by-law elect from among themselves an executive committee and may delegate to the executive committee any powers of the Board subject to any limitations set out in the by-law.

Other
committees

(2) The Board may by by-law appoint a committee or committees and delegate to that committee or committees any of the powers of the Board as set out in the by-law.

Auditor

R.S.O. 1980,
c. 405

12. The Board shall appoint a public accountant, licensed under the *Public Accountancy Act*, as auditor of the Corporation.

By-laws

R.S.O. 1980,
c. 410

13. Subject to the *Public Hospitals Act*, the Board may enact by-laws for the operation and management of the affairs of the Corporation and of its hospital or any similar institution established by the Corporation.

Chairman

14.—(1) The Board shall elect a chairman from among its members who shall hold office for such period as may be set out in the by-law.

President,
other
officers

(2) The Board shall appoint a president and may appoint other officers.

(3) Members of the Board may be appointed under subsection (2). Board members eligible

15.—(1) The Board may by by-law establish voting rights and categories of persons eligible to vote at any meeting called for the purpose of electing trustees, based on financial contributions or other criteria. Financial contributors

(2) Those persons who are subscribers of Toronto General Hospital or members of Toronto Western Hospital on the day this Act comes into force continue as financial contributors to the Corporation with the same rights and privileges unless and until varied by by-law of the Corporation. Membership continued

16.—(1) Subject to the *Public Hospitals Act*, the Board may appoint medical staff including persons engaged in research activities on such terms and conditions as the Board considers advisable. Medical staff
R.S.O. 1980,
c. 410

(2) Subject to the *Public Hospitals Act*, each person who is a member of the medical staff of Toronto Western Hospital or Toronto General Hospital continues as a member of the medical staff of the Corporation for the term of the member's appointment. Transition, medical staff

17. The following Acts are repealed: Repeal

1. *The Toronto General Hospital Act*, being chapter 396 of the Revised Statutes of Ontario, 1937.
2. *The Toronto Western Hospital Act, 1942*, being chapter 59.
3. *The Toronto General Hospital Amendment Act, 1946*, being chapter 99.

18. This Act comes into force on the day it receives Royal Assent. Commencement

19. The short title of this Act is the *Toronto Hospital Act, 1986*. Short title

Bill 129

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 129

(Chapter 36
Statutes of Ontario, 1986)

An Act to amalgamate Toronto General Hospital and Toronto Western Hospital

The Hon. M. Elston
Minister of Health



<i>1st Reading</i>	July 10th, 1986
<i>2nd Reading</i>	October 21st, 1986
<i>3rd Reading</i>	October 29th, 1986
<i>Royal Assent</i>	October 29th, 1986

Bill 129

1986

An Act to amalgamate Toronto General Hospital and Toronto Western Hospital

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“Board” means the board of trustees of The Toronto Hospital;

“Corporation” means The Toronto Hospital;

“Toronto General Hospital” means the corporation named “The Trustees of the Toronto General Hospital” and also known as Toronto General Hospital.

2.—(1) Toronto General Hospital and Toronto Western Hospital are amalgamated and continued as a corporation without share capital under the name of The Toronto Hospital.

Amalgamation and continuation as corporation

(2) The Corporation shall be composed of its members who are those persons who from time to time comprise its Board.

Composition

3. The letters patent of Toronto Western Hospital are revoked on the day this Act comes into force but their revocation does not affect the property, rights, duties, licences, privileges, contracts or obligations of Toronto Western Hospital as they existed on the day this Act comes into force.

Letters patent revoked

4.—(1) All gifts, trusts, bequests, devises and grants of real or personal property or of the income or proceeds thereof, heretofore or hereafter expressed by any person in a deed, will or other document, to be made, given or conveyed to Toronto General Hospital or Toronto Western Hospital or any of their units or to any person in trust for or for the benefit of the foregoing, shall, in so far as the same shall not have vested in possession or been carried into effect on the day this

Gifts, etc.

Act comes into force, in the absence of an expressed intention to the contrary set out in such deed, will or other document, be construed as though the same had been expressed to be made to the Corporation and shall be paid over, granted or conveyed, by the executor, trustee or other person or corporation charged with the duty of carrying into effect or administering such deed, will or other document to the Corporation whose receipt shall be a sufficient discharge thereof.

Idem,
to hospital
foundation

(2) All gifts, trusts, bequests, devises and grants of real or personal property or of the income or proceeds thereof, heretofore or hereafter expressed by any person in a deed, will or other document, to be made, given or conveyed to The Toronto General Hospital Foundation or Toronto Western Hospital Foundation or to any person in trust for or for the benefit of the foregoing, shall, in so far as the same shall not have vested in possession or been carried into effect on the day the foundations amalgamate, in the absence of an expressed intention to the contrary set out in such deed, will or other document, from and after such amalgamation, be construed as though the same had been expressed to be made to the amalgamated foundation and shall be paid over, granted or conveyed, by the executor, trustee or other person or corporation charged with the duty of carrying into effect or administering such deed, will or other document to the amalgamated foundation whose receipt shall be a sufficient discharge thereof.

Transfer
of property,
liabilities,
etc.

(3) The Corporation shall,

- (a) possess all the property, rights, privileges and franchises and shall be subject to all liabilities, contracts, disabilities and debts of Toronto General Hospital and Toronto Western Hospital existing on the day this Act comes into force; and
- (b) be deemed to be the party plaintiff or the party defendant, as the case may be, in any civil action commenced by or against Toronto General Hospital or Toronto Western Hospital before the coming into force of this Act.

Idem

(4) A conviction against or ruling, order or judgment in favour or against Toronto General Hospital or Toronto Western Hospital may be enforced by or against the Corporation.

Objects

5.—(1) The objects of the Corporation are,

- (a) to establish, equip, maintain, operate and conduct hospital, teaching and research facilities and provide programs of patient care and community health;
- (b) to conduct programs of education and research in the field of health in association with the University of Toronto or with other persons; and
- (c) to accept donations, gifts, legacies and bequests for use in promoting the objects of and carrying on the work of the Corporation.

(2) The Corporation shall, prior to conducting programs under clause (1) (b) with persons other than the University of Toronto, consult with the University of Toronto in the manner set out in the by-laws of the Corporation.

Prior
consultation

6.—(1) The affairs of the Corporation shall be managed and controlled by a board of trustees constituted as follows:

Board of
trustees

1. Three trustees appointed by the Lieutenant Governor in Council for a term of three years.
2. Four trustees appointed by The Governing Council of the University of Toronto for a term of three years.
3. Three trustees appointed by the council of The Corporation of the City of Toronto to hold office until the expiration of the term of the council that made the appointments.
4. At least one but not more than two representatives of The Toronto Hospital Auxiliary appointed in the manner and for the term set out in the by-laws of the Corporation.
5. The president of the Corporation, the president of the medical staff, the chairman and the vice-chairman of the medical advisory board.
6. Eleven trustees elected by the financial contributors to the Corporation as determined by by-law for a term of three years.
7. Such other persons as are provided for under the *Public Hospitals Act*.

Reappoint-
ment or
re-election

(2) Trustees shall serve until their successors are appointed or elected and may be reappointed or re-elected subject to any restrictions set out in the by-laws.

Staggered
terms

(3) The trustees elected under paragraph 6 of subsection (1) shall be retired in rotation in accordance with the by-laws of the Corporation but at least two of such trustees shall retire each year.

Number of
trustees may
be altered

(4) The number of trustees elected under paragraph 6 of subsection (1) may be changed by by-law of the Corporation.

By-law to be
approved

(5) No by-law of the Corporation under subsection (4) is effective unless it is passed,

(a) by a majority of votes cast by the elected trustees;
and

(b) by a majority of votes cast by the appointed trustees,

at a meeting called for that purpose.

Confirmation
of by-law

(6) A by-law passed under subsection (4), and a repeal, amendment or re-enactment thereof, unless confirmed by at least two-thirds of the votes cast at a meeting of the financial contributors to the Corporation called for that purpose, is effective only until the next annual meeting unless so confirmed by the financial contributors at such annual meeting and in that case no new by-law of the same or like substance has any effect until so confirmed at a general meeting of the financial contributors.

Persons
ineligible to
be trustees

(7) No member of the medical staff or employee of the Corporation and no child, parent, brother, sister or spouse of a trustee is eligible for election or appointment to the Board other than as an honorary or *ex officio* trustee.

Persons
eligible
to be
trustees
R.S.O. 1980,
c. 410

(8) Notwithstanding subsection (7), or the *Public Hospitals Act*, the president, a dean of a health science faculty and the health sciences vice provost of the University of Toronto are eligible to be members of the Board.

Vacancies

(9) Vacancies on the Board shall be filled,

(a) in the case of appointed trustees, by the body making the original appointment; and

- (b) in the case of elected trustees, by the remaining elected trustees, from persons nominated by the chairman of the Board,

and such person shall hold office for the unexpired term of the vacating member.

(10) Two-fifths of the members of the Board constitute a quorum for the transaction of business. Quorum

(11) The services of the members of the Board shall be given without remuneration, except for actual disbursements incurred in connection with the affairs of the Corporation and approved by the Board, but this subsection does not prevent an *ex officio* member of the Board from receiving a salary or other remuneration for his or her employment by or services rendered to the Corporation otherwise than as a trustee. Remuneration

7.—(1) The members of the boards of trustees of Toronto General Hospital and Toronto Western Hospital in office immediately prior to the coming into force of this Act are the first trustees of the Corporation and shall remain in office until their successors are appointed or elected in accordance with this Act and the by-laws. Transition

(2) Notwithstanding subsection (1), the Board may by by-law reduce the number of trustees until the Board is constituted as set out in subsection 6 (1). Number of trustees may be reduced

8. Subject to the *Public Hospitals Act*, the Corporation may, Powers of Corporation
R.S.O. 1980,
c. 410

- (a) furnish, equip, alter, expand or enlarge its hospitals and establish or acquire other hospitals or similar institutions;
- (b) acquire real property that is necessary or desirable for the alteration, expansion or enlargement of its hospital, or otherwise for the purposes of the Corporation, by gift, deed or lease or, subject to the *Expropriations Act*, by expropriation; R.S.O. 1980,
c. 148
- (c) acquire personal property that is necessary or desirable for the purposes of the Corporation by gift, purchase or lease;
- (d) sell or dispose of any real or personal property no longer required for its purposes, but the proceeds derived from any such sale or disposal shall be held and applied for the purposes of the Corporation;

- (e) borrow money on the credit of the Corporation and provide security therefor on such terms and in such amounts as it may deem advisable; and
- (f) subject to any express term of a specific trust, invest and reinvest its funds in such securities as are authorized by by-law without being limited to those investments authorized for trustees under the *Trustee Act*.

R.S.O. 1980,
c. 512

Meetings
R.S.O. 1980,
c. 410

9. Notwithstanding the *Public Hospitals Act*,

- (a) the annual meeting of the Corporation shall be held between the 1st day of April and the 1st day of October in each year on a day fixed by the Board; and
- (b) notice of the annual or any other meeting of the Corporation shall be given in the manner set out in the by-laws of the Corporation.

Proxies

10. The Board may by by-law permit proxy voting by the financial contributors of the Corporation in the manner set out in the by-law.

Executive
committee

11.—(1) The Board may by by-law elect from among themselves an executive committee and may delegate to the executive committee any powers of the Board subject to any limitations set out in the by-law.

Other
committees

(2) The Board may by by-law appoint a committee or committees and delegate to that committee or committees any of the powers of the Board as set out in the by-law.

Auditor

R.S.O. 1980,
c. 405

12. The Board shall appoint a public accountant, licensed under the *Public Accountancy Act*, as auditor of the Corporation.

By-laws

R.S.O. 1980,
c. 410

13. Subject to the *Public Hospitals Act*, the Board may enact by-laws for the operation and management of the affairs of the Corporation and of its hospital or any similar institution established by the Corporation.

Chairman

14.—(1) The Board shall elect a chairman from among its members who shall hold office for such period as may be set out in the by-law.

President,
other
officers

(2) The Board shall appoint a president and may appoint other officers.

(3) Members of the Board may be appointed under subsection (2).

Board members eligible

15.—(1) The Board may by by-law establish voting rights and categories of persons eligible to vote at any meeting called for the purpose of electing trustees, based on financial contributions or other criteria.

Financial contributors

(2) Those persons who are subscribers of Toronto General Hospital or members of Toronto Western Hospital on the day this Act comes into force continue as financial contributors to the Corporation with the same rights and privileges unless and until varied by by-law of the Corporation.

Membership continued

16.—(1) Subject to the *Public Hospitals Act*, the Board may appoint medical staff including persons engaged in research activities on such terms and conditions as the Board considers advisable.

Medical staff
R.S.O. 1980, c. 410

(2) Subject to the *Public Hospitals Act*, each person who is a member of the medical staff of Toronto Western Hospital or Toronto General Hospital continues as a member of the medical staff of the Corporation for the term of the member's appointment.

Transition, medical staff

17. The following Acts are repealed:

Repeal

1. *The Toronto General Hospital Act*, being chapter 396 of the Revised Statutes of Ontario, 1937.
2. *The Toronto Western Hospital Act, 1942*, being chapter 59.
3. *The Toronto General Hospital Amendment Act, 1946*, being chapter 99.

18. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

19. The short title of this Act is the *Toronto Hospital Act, 1986*.

Short title

CA20N
XB
B 56

Bill 130

An Act to repeal the Gold Clauses Act

The Hon. R. Nixon

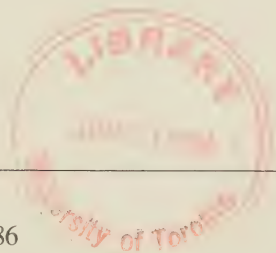
Treasurer of Ontario and Minister of Economics

1st Reading July 10th, 1986

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The repeal of the Act is proposed as it appears to now serve no useful purpose; comparable federal legislation has recently been repealed by Canada.

Bill 130**1986****An Act to repeal the Gold Clauses Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Gold Clauses Act*, being chapter 189 of the Revised Statutes of Ontario, 1980, is repealed.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Gold Clauses Repeal Act*, Short title
1986.

Bill 130

(Chapter 44
Statutes of Ontario, 1986)

An Act to repeal the Gold Clauses Act

The Hon. R. Nixon
Treasurer of Ontario and Minister of Economics

<i>1st Reading</i>	July 10th, 1986
<i>2nd Reading</i>	October 27th, 1986
<i>3rd Reading</i>	November 4th, 1986
<i>Royal Assent</i>	November 4th, 1986



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